

## Special water usage as part of the investment process

In the course of executing an investment, many investors come in contact with the issue of water usage, i.e. the discharge of sewage to the ground or water or the disposal of rainwater from a construction site. The core piece of legislation which relates to water usage is the Water Act of 18 July 2001 (uniform text Dz. U. of 2005, No. 239, item 2019, as amended).

The statute defines several water usages. Not all of the listed water usages are relevant to investment execution or later use of the completed project. Nonetheless, in order to present a full picture of the issue at hand, it is necessary to list all of the water usages provided for in the statute. This is the only way to provide the right perspective and backdrop for the uses which usually come into play during investment and post-investment processes.

Pursuant to Art. 31.1 of the Water Act (“Act”), water usage means its use for human or agricultural/economic needs. This is a very broad definition, thus, the statute defines various types of water usage. In line with Art. 31.3 of the Law, water usage entails:

- Common usage
- Ordinary usage
- Special usage.

Pursuant to Art. 34.1 of the Act, everyone has the right to the common usage of water, i.e. public inland surface water, interior sea water, exterior water of the Gdansk Gulf and territorial sea water, unless relevant regulations stipulate otherwise. The objective of common usage is:

- to meet personal, household and agricultural needs, without the use of special technical apparatus,
- recreation, tourism, water sports and amateur fishing in accordance with guidelines set for in relevant regulations.

According to Art. 36.1 of the Act, landowner has the right to the ordinary usage of water that is his property and underground water found within the borders of his property. This right does not encompass, however, the right to erect water installations without the required water permit. The objective of the ordinary usage of water is to meet personal household and agricultural household needs, excluding cases listed in Art. 36.3 of

the Act, for example, excluding use of water for business activities. The latter element of the definition of ordinary water usage precludes the possibility of qualifying water used in professionally undertaken (as part of business activity) investment processes as ordinary water usage.

Pursuant to Art. 37 of the Act, special water usage is any use beyond common and ordinary usage, in particular:

- uptake or discharge of surface and underground waters
- discharge of sewage to water or the ground
- transfer of water or artificial supply of underground waters
- elevation and retention of inland surface waters
- use of water for power generation
- use of water for yachting or canoeing
- extraction from water of stone, gravel, sand and other materials, as well as the removal of vegetation from water and banks
- use of inland surface water for fishing.

The above is not an exhaustive list of all possible special usages of water. Without a doubt, instances in which surface rainwater is discharged to watercourse or when other sewage is discharged to water or to the ground as part of an investment comprise examples of special water usage.

As a rule, special water usage, thus also the use of water in the course of an investment, requires a water permit. Pursuant to Art. 122.1.1 of the Act, if the statute does not provide otherwise, a water permit is required for special water usage.

In line with Art. 127.1 of the Act, a water permit is issued by way of a decision for a defined period. Pursuant to succeeding paragraphs, a water permit for special water usage can be issued for a maximum of 20 years,

while a water permit for the discharge of sewage to water or to the ground can be issued for not more than 10 years. It should be noted that sewage, within the meaning of the Act comprises, in line with Art. 9.1.14, for example, rainwater or melted snow, contained in open or closed sewage systems, coming from contaminated areas with permanent surface, in particular from cities, ports, airports, industrial, commercial, retail, storage areas, transport hubs, roads and parking lots.

Pursuant to Art. 127.7 of the Act, the party to the proceedings to be issued a water permit is the applicant, the water owner, the director of the regional water management board, as well as the owner of the water installations in charge of the administration of the land and authorized to fish, found within the impact zone of the intended water usage or the planned water installations.

According to Art. 128.1, a water permit defines the purpose and scope of water use, terms and conditions for exercising the rights under the permit and environmental protection, public and agricultural obligations, in particular: quantity, quality and composition of sewage discharged to water, ground or sewage systems or minimal percent of reduction of pollutants in the sewage treatment process, and in the case of industrial sewage, if justified, permissible levels of pollutants, especially quantities of substances especially detrimental to the water ecosystem, expressed in units of measurement per unit of the used raw material, fuel or resulting product. If necessary, the water permit additionally establishes the obligation to perform works or to share in the costs of maintenance of water installations, proportionate to the realised benefits.

In line with Art. 140.1 of the Act, *starosta*, head of the county, is the authority competent to issue water permits, under the scope of state administration responsibilities conferred on that office, subject to exceptions provided for in the statute, when the competent authority is the voivodship marshal or the director of the regional water management board. The office authorised to issue water permits is competent to make decisions in cases of the expiration, withdrawal or restriction of such a permit, as well as decision to transfer the right of ownership to a water installation onto the holder of ownership rights to the water.

This article represents only a very general discussion of issues relating to water usage, which may arise in the course of investment execution, to illustrate how highly important the issues can be and how material can be their effect on the rights and obligations

of the investors and other entities participating in the investment process. Of course, legislative issues relating to water use are not relevant to every investment, but only to investments whose execution is irrevocably linked with water usage, when it then comprises one of the material elements of the entire process of planning, execution and later functioning of the investment. The necessity

to use water in the course of the execution or operation of the investment may impose material obligations on the investor and, as such, may not only affect the legal and economic shape of the executed project but, most often, may also be decisive to the technological solutions selected for use in the course of the investment.

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