

Thema: PHH Rechtsanwälte

Autor: k.A.



FDI IN REAL ESTATE RESTRICTED

The Sword of Damocles aka the Investment Control Act hangs over foreign direct investments in Austria and does not leave real estate transactions unscathed.

Aiming to safeguard public security and public order, the Austrian Investment Control Act (InvKG; based on the European FDI Screening Regulation) imposes on foreign direct investments in Austria an approval requirement, provided that (i) the Austrian target company carries out its activities in certain sensitive areas or „critical infrastructures“ and (ii) such investment is made by a third-country national (i.e., a natural person of a third country

or an undertaking of a third country outside the EU, EEA and Switzerland). Among others, asset deals (e.g., real estate transaction) are subject to such an approval granted by the Austrian Federal Ministry for Digital and Economic Affairs (BMDW), if material assets of an Austrian target company are directly or indirectly (e.g., by a natural person of a third country controlling an undertaking with its seat in the EU, EEA or Switzerland) acquired by a third-country national. Real estate, with a connection to critical infrastructures, may also be classified as such material asset of an Austrian company (e.g., the real estate of an energy provider with hydroelectric power plants/wind farms built on it, a telecommunications company with a data center built on it, a food manufacturer including its cultivation areas).

whether the intended foreign direct investment may lead to a threat to public security or public order in Austria.

Pitfalls in real estate transactions

It is common, that Austrian companies, operating in „critical infrastructures“ (items 1.1-1.13 under part 2 of the Annex to the InvKG), own real estate. In the case of an asset deal (e.g., real estate transaction), it is advisable to assess the business operated on the relevant real estate by the selling company. In the case of an activity in the area of critical infrastructures and classification as material asset for the selling company, the acquisition of real estate is subject to an approval by the BMDW. In case a real estate transaction requires an approval under the InvKG, such transactions are deemed by law to have been concluded subject to the condition precedent that an approval will be granted. Thus, a violation of the InvKG may not only affect the validity of the transaction, but also result in criminal and administrative penalties.



Protected areas of public security and public order

The InvKG protects (i) particularly sensitive areas, which are defined in an exhaustive list under part 1 of the Annex to the InvKG, and (ii) critical infrastructures, in which there may be a threat to security or public order (e.g., energy, information

technology, traffic and transport, health, food, telecommunications, data processing or data storage), as defined in a demonstrative list under part 2 of the Annex to the InvKG. Consequently, each foreign direct investment by a third-country national shall be examined in advance whether it affects one of the aforementioned areas and, in such case,

technology, traffic and transport, health, food, telecommunications, data processing or data storage), as defined in a demonstrative list under part 2 of the Annex to the InvKG. Consequently, each foreign direct investment by a third-country national shall be examined in advance whether it affects one of the aforementioned areas and, in such case,

PHH Rechtsanwälte

Ihr Ansprechpartner:
 Dr. Philip Rosenauer, LL.M.
 Counsel
 +43 676 897 008 897
 rosenauer@phh.at



PHH
RECHTSANWÄLTE

www.phh.at

Anfragen für weitere Nutzungsrechte an den Verlag

Entgeltliche Einschaltung: Foto: iStock.com/RosaHelen