

What will the government change in Poland's road building programme?

It has been announced that the new Polish authorities are short of around PLN 90 billion (EUR 20 billion) to carry out its National Road Building Programme. The Minister of Infrastructure is working on a strategy to make the Programme a reality.

The biggest road investments for 2014-2023

Route	Length	Construction period
S5 Wrocław-Nowe Marzy	273.4 km	2014-2019
S6 Szczecin-Gdańsk	329.5 km	2015-2020
S7 Gdańsk-Rabka-Zdrój	439.3 km	2014-2022
S17 Warszawa-Hrebenne (Ukraine)	238.5 km	2014-2022
S19 Barwinek (Slovakia) - Kuźnica (Belarus)	566.1 km	2014-2023

Insufficient funds for planned expressways

The national road building programme for 2014-2023, foresees spending PLN 107 bn to construct 3,900 km of expressways (i.e. roads to a standard just below motorways). According to the new Minister of Infrastructure, Andrzej Adamczyk, in reality the construction of 3,900 km of roads under the programme would cost a total of PLN 198 bn (as opposed to PLN 107 bn currently specified in the Programme). The Minister is now working on ways to resolve the problem of the PLN 90 bn funding shortfall. It also announced an audit at the National Road Fund (KFD), which will soon have to redeem bonds issued to finance previous investments by the State Treasury in the road sector.

Optimisations in the design phase

The Minister of Infrastructure wants to lower the Programme's costs mainly through the selection of cheaper technologies and use of "smart designs". It plans to introduce a catalogue of parameters for typical construction objects built in the so-called road corridors (such as bridges, animal pathways, soundproof barriers). It also wants to eliminate compulsory planning and preparatory works regarding potential construction of a third lane on express roads – such plans and works will be implemented only for sections having clear potential to generate heavy traffic in the future based on the 2015 general traffic survey and resulting forecasts. Some express roads could be built in a 2+1 format with alternating stretches of two lanes in one direction and a single lane in the opposite direction.

Changes to the existing development model

The "design&build" development model proposed to date by the General Director for National Roads and Motorways (GDDKiA) with the construction company receiving only general requirements and being itself responsible for road design is being criticised by the industry. The construction companies claim that the model burdens them with the risk of additional preparatory work, including additional ground surveys, which increase their pricing. The Minister of Infrastructure plans to address these claims and allocate the responsibility of maintaining conclusive surveys to the GDDKiA. The Minister also wants to prepare construction contract templates in cooperation with an organisation made up of representatives of all industry players. A similar model functions in Netherlands, among other countries.

On selected projects, special purpose vehicles are to take over the role of an investor from GDDKiA, financing loss-making expressways with profits from toll motorways.

The GDDKiA will most likely be transformed into an agency responsible for servicing roads and strategic planning of road construction.

New law, new investors

The Minister of Infrastructure is looking at legislation to amend the public procurement regulations which presently state that the lowest price remains the main selection criterion. The Minister of Infrastructure is considering a "two envelope" system, under which developers would file technical offers, and only after evaluating these offers would their cost proposal be considered.

KFD's higher revenue

The Minister admits it would be impossible to build roads worth PLN 107 bn even after introducing the necessary changes. Thus, after a cost-cutting process is finalised, it will try to increase KFD's budget, which is currently financed from levies on fuel and motorways fees, among other sources. The government would prefer to avoid raising the fuel levies, but motorway and expressway fees could rise in future. The Minister of Infrastructure will be cautious about rising KFD's indebtedness through loans and bond issues already seeing it as a significant burden for the fund.

Conclusions

A lot of these governmental proposals move towards meeting the industry's expectations. Construction companies have lobbied for a long time to create a catalogue of standard construction terms, to change procurement regulations, and to improve project preparation by GDDKiA. The success of the new Minister of Infrastructure will depend whether he will be able to introduce the planned changes without delaying public tenders for new sections of motorways and expressways. Suspending the tenders could make development of the planned projects impossible as they are co-financed from EU funds.

Contacts



Grzegorz Namiotkiewicz
Partner

T: +48 22 627 11 77

E: grzegorz.namiotkiewicz@cliffordchance.com



Marcin Bejm
Counsel

T: +48 22 627 11 77

E: marcin.bejm@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Norway House, ul. Lwowska 19, 00-660 Warsaw, Poland

© Clifford Chance 2016

Clifford Chance, Janicka, Krużewski, Namiotkiewicz i wspólnicy
spółka komandytowa

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.