

**ODRA – VISTULA FLOOD MANAGEMENT PROJECT
LOAN No. 8524-PL**

Sweco Consulting sp. z o.o. – JV Leader, ul. Łyskowskiego 16, 71-641 Szczecin
Tel. 605 071 242, email: odra.szczecin@sweco.pl

Szczecin, 11 August 2020

**LEGAL NOTICE ON COMPENSATION TO FORMER LESSEES WHOSE LEASED AREA
EXCEEDED THE PROPERTY WHICH CURRENTLY CONSTITUTES PLOT 7/16**

TASK 1B.3/1 – CONSTRUCTION OF MOORING BASE FOR ICEBREAKERS

1. Factual circumstances

During the preparation of the Land Acquisition and Resettlement Action Plan for Task 1B.3/1 – Construction of mooring base for icebreakers, persons who had leased plot No. 7/11, precinct 4112, located at Karpia street in Szczecin, with an area of 1.7613 ha, from the Municipality of Szczecin represented by the Municipal Buildings and Premises Board in Szczecin were found. Former lessees were qualified as PAP – Project Affected Persons.

The lease contracts in question were terminated twice, initially in 2007, and subsequently the termination was communicated in 2017.

In accordance with the decision of the Mayor of Szczecin of 27 July 2017, the plot in question was divided into plots number: 7/16 (area: 1.4445 ha), 7/17 (area: 0.3062 ha) and 7/18 (area: 0.0105 ha). Plots number: 7/17 and 7/18 were allotted to create narrow rights-of-way directly adjacent to plot no. 7/16, which covers the vast majority of the previously leased areas.

After obtaining permits from the former lessees to access to the files related to the lease contracts, the content of the lease contracts along with the attached maps indicating the leased area, termination notices for these contracts, as well as delivery and acceptance protocols signed by the lessees and the Municipal Buildings and Premises Board in Szczecin were analysed. The above led the Consultant to conclude that some of the lease contracts covered the area which, after the division of plot no. 7/11, in addition to the property constituting plot no. 7/16, also included parts of other plots resulting from the division.

2. Termination of lease contracts and the Investment

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The first termination of lease contracts in 2007 took place due to the demand for property for the implementation of the investment entitled: construction of the Cultural Centre "Podjuchy", i.e. due to an investment unrelated to the Project. However, as the investment was not implemented, the Municipality of Szczecin, as the property owner, withdrew the notice of termination.

The reason for the termination of contracts in 2017 was the planned implementation of an all-season mooring base with facilities for a fleet of icebreakers. Thus, while the lease contracts were effectively terminated before the Investor of OVFMP – State Water Holding Polish Waters acquired the rights to the property, the termination of the lease contracts and thus the need for lessees to hand over the leased land was directly related to the implementation of the Investment regarding the construction of a mooring base for icebreakers.

3. Operational Policy of the World Bank OP 4.12. in the context of compensation to all former lessees

According to the World Bank Operational Policy 4.12. regulations concerning involuntary resettlement are applied whenever the Project implementation requires involuntary taking of land, which results in the loss of assets or access to assets. The entities affected by the effects of the implementation of the Project should be considered, on the one hand, as lessees, annuitants and other limited right possessors of the properties as well as persons who dispose of the properties as limited right possessors, but without a title, and, on the other hand, also owners of crops, plants, buildings, and other structures attached to the land. In addition, in accordance with the WB Policy, each person qualified as a PAP should receive compensation for the loss of assets other than land. The analysis of documentation referred to in item 2 of this Notice led to the conclusion that, in principle, the land was handed over to the lessees without buildings, utilities or infrastructure, and any improvements were made by the lessees with their own resources.

Due to the above, former lessees who, despite the original termination of contracts due to the investment unrelated to the Project, signed new lease contracts with the owner, which were then terminated due to the implementation of the Flood Management Project, should be qualified as PAPs.

According to §3 of the World Bank's OP 4.12 Involuntary Resettlement, Operational Manual, the Bank's operational policy only applies to actions directly related to the acquisition of property

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and covers direct impacts of the involuntary taking of the property. Consequently, when considering the possibility of compensating former lessees who leased land that extends beyond the current plot No. 7/16, it is necessary to analyse the impact of the implementation of the Investment on their loss of lease. In the notices terminating the lease contract, the property owner indicated each time that the property is required for the investment project and, in compliance with the lease contract, requested the lessees to leave and clear the land at their own expense. Letters with the indicated content, along with the grounds for the decision to terminate the contracts, i.e. the implementation of the flood management investment, were also handed over to the persons leasing the area extending beyond the current plot no. 7/16, with no indication of exclusively the area where the investment would be carried out.

Consequently, it must be concluded that the termination of all lease contracts was directly linked to the use of the property for the planned project and was a direct consequence of the investment project. Contracts concerning the entire leased area, and not only the area in which the investment will be implemented, were terminated because of the investment. The termination also covered parts of properties which currently constitute access roads. It should therefore be pointed out that the plots created as a result of the division of the property are intended for road plots, which constitute a transportation improvement for the investment plot. Therefore, despite not being recognised as investment plots, they will be used for the project.

It should also be emphasised that if the flood management project was not carried out, the lease contracts, which covered the area of other plots created after the division of plot No. 7/11, i.e. 7/17 and 7/18, would also not be terminated. Consequently, despite finding that only plot number 7/16 is an investment plot, the termination of the lease contracts and the loss of all crops, plants, buildings, and other structures attached to the land also located on plots numbers 7/17 and 7/18 is a direct result of the seizure of the property. What is also important, there is no situation in these circumstances where the entire leased area would be entirely outside the investment plot.

The analysis of the documentation provided leads to a conclusion that the parts of the plots that were located outside the investment plot could continue to be used independently in accordance with their intended purpose.

At the same time, it is currently impossible to accurately reconstruct the boundaries and the area of each plot, because the maps in the ZBiLK Szczecin files are indicative maps which do not show the exact location and boundaries of the leased parts of the property. The consequence of the above could therefore be a detriment to the former lessees and payment of compensation that does not take into account all the plantings, buildings, structures, and other elements

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located on plot 7/16. The Investor's action, which in fact has negative effects on the PAP, should be considered as obviously contrary to the OP 4.12 operational policy.

4. Conclusions – compensation to lessees whose leased area exceeded the property which currently constitutes plot 7/16

As a result of the above, in particular due to the obvious direct relationship between the termination of the lease contracts concerning the area which, after the division of plot No. 7/11, in addition to the property constituting plot No. 7/16, also covered other plots resulting from the division, and the implementation of the planned flood management investment related to the construction of a mooring base for icebreakers, compensation should also be due to these lessees. In addition, this compensation should also include the value of any plantings, structures, buildings, trees that were also located outside the plot that is now plot 7/16, which follows from the fact that their loss is also a direct consequence of the investment. If it had not been for the flood management investment, the lease contracts for the area not covered by the current plot 7/16 would not have been terminated.

Taking into account the principles and guidelines of the WB operational policy, it should be emphasised that it is not possible to precisely determine the boundaries of the leased area on the basis of the available documents, which results in a possible reduction of the compensation to be paid.

Appendices:

1. Annex 1 to the legal information on damages.