

REAL ESTATE

The choice of the right neighbor – foreigners face new complications when purchasing real estate in Poland

On January 1, 2016, a new law regulating the agricultural system ("the Act") will come into force. The Act introduces important changes regarding the acquisition of agricultural real estate, including restrictions for foreigners. The wording of the Act is not clear and its application could therefore cause serious practical problems.

According to the provisions of the Civil Code, agricultural real estate (agricultural land) is real estate that can be used for both plant and animal agricultural production, not excluding gardening, horticulture and fisheries. However, real estate located within areas designated in local zoning plans for purposes other than agricultural use is not considered by the Act as agricultural real estate. Taking into account the fact that local zoning plans are still uncommon in Poland, the newly introduced provisions will be generally applicable.

Under the current law governing the acquisition of real estate by foreigners, the consent of the Ministry of Internal Affairs is not required for the acquisition by citizens or entrepreneurs from a European Economic Area member state or Switzerland, unless it relates to agricultural land or a forest and takes place within 12 years as of Poland's entry into the European Union. Accordingly, as of May 1, 2016, due to the completion of the transitional period, given foreigners will be entitled to acquire Polish agricultural land without the consent of the Ministry of Internal Affairs.

In practice, however, the above limitation has been replaced by new regulations that introduce, amongst others, a new pre-emptive right to agricultural land. Until January 1, 2015 a tenant or, in certain cases, the Agricultural Real Estate Agency had a pre-emptive right of acquisition. After January 1, 2016, if there is no tenant or the tenant has not exercised its pre-emptive right, such right will be extended to individual farmers who own adjacent real estate to the property for sale. If there is more than one neighboring farmer, the seller of the real estate will have the right to choose which farmer is able to exercise the right.

As in the case of the Act, the above mentioned regulation will probably cause practical problems and doubts as to its interpretation. Even at this stage, legal experts have doubts as to whether the provisions are in line with European Law, which prohibits indirect discrimination that favors national citizens.

In light of the above, both local and foreign entrepreneurs should consider the convenience of completing agricultural real estate transactions before the new regulations come into force, i.e. before January 1, 2016.

PUBLIC PROCUREMENT

Landmark Polish Supreme Court judgment on joint organization of proceedings by entities with a non-uniform legal status

On February 28, 2014, the President of the Public Procurement Office (the "**President of the PPO**") filed an appeal with the Supreme Court against the District Court of Warsaw judgment dated June 28, 2013 concerning the joint organization of public procurement proceedings by entities with a non-uniform legal status (in these proceedings these entities would act as the awarding entities). In the contested judgment, the District Court declared that the Public Procurement Law of January 29, 2004 (the "**Law**") prohibits the joint organization of public procurement proceedings by entities with a non-uniform legal status, i.e. between entities with legal status to contract according to the Law (i.e. mainly public financial sector entities) and entities without such status, e.g. capital companies not belonging to the public financial sector.

In the appeal, the President of the PPO alleged that the interpretation of the District Court that the Law does not allow joint organization of proceedings by entities with a non-uniform legal status contradicts the provisions of the Act. The President of the PPO also pointed out that the contested District Court judgment breaches a fundamental principle of the law, i.e. the principle of contractual freedom established in Article 353¹ of the Civil Code, one of the guiding principles of civil law.

In its judgment of April 2, 2015 (ref. No. I CSK 207/14), the Supreme Court annulled the decision of the District Court and declared that the provisions of the Act do not prohibit joint organization of public procurement proceedings by entities with a legal status to contract according to the Act and entities without such status. The Supreme Court also pointed out that under the Act, there are no legal grounds to deprive parties with non-uniform legal status of the possibility of jointly organizing public procurement proceedings, especially when the need arises for economic and organizational reasons.

The Supreme Court's judgment is a useful guide for entities operating in capital groups with a non-uniform structure, particularly with regard to proceedings relating to utility contracts (contracts in the fields of defense and security).

M&A

New rules to control certain investments

On 10 July, the Polish Parliament passed new legislation on investment in certain categories of companies. Under the new rules, investors who intend to take control of companies operating, amongst others, in the energy and telecommunications sectors, are obliged to obtain consent from the Ministry of the State Treasury.

An investor is obliged to seek consent before concluding any binding contract leading to a change in control over a company.

Consent is also required if an investor acquires a significant holding in a company. The new rules define a significant holding as a situation in which an investor has at least 20% of the voting rights on the company's governing body.

The State may refuse to grant consent if public security or public order is compromised by the planned transaction. The State must reach a decision within 90 days of the notification. The decision may be challenged before an administrative court.

A contract leading to a change in control without previous consent is null and void. If a significant holding is achieved without clearance, the investor is not entitled to exercise the voting rights attached to the acquired shares.

A breach of the new law may lead to severe consequences for persons who were obliged to seek State consent. Breaking the law is punishable by up to 5 years' imprisonment and a fine of up to PLN 100 million.

A list of companies covered by the regulation will be published by the Ministry of the State Treasury. The list may include public or private companies operating in the sectors specified by the regulation.

After the conclusion of the Parliamentary proceedings, the new law will be signed by the President and published before it enters into force. The law will enter into force 30 days after its publication.

CIVIL LAW

Amendment of the law of inheritance

As of October 18, 2015, new regulations governing the law of inheritance came into force. The amendment relates to the rules of acquisition of an inheritance in the case of silence on the part of an heir. Current rules determine that in the case of failure to make a declaration on acquisition or refusal of an inheritance within the indicated term, the heir acquires it with unlimited liability for all the debts relating to such inheritance. According to the amendment, the basic form of acquisition of an inheritance in the case of the absence of the mentioned declaration by the heir will be the acquisition of the inheritance with limited liability for the heir. In other words, the heir's liability will be restricted to the value of the assets of the inheritance only.

Limitation of the liability for debts relating to the inheritance is undoubtedly favorable to all heirs. On the other hand, the amendment may worsen the legal situation of financial institutions. The risks involved in granting credit and loans to elderly persons may significantly increase.

TAX

New regulations of the Act on Taxes and Local Charges

On 11 September 2015, new regulations of the Act on Taxes and Local Charges took effect, introducing a new public levy – the advertising charge. These regulations grant local authorities the right to adopt resolutions on collecting an advertising charge on advertising boards or advertising installations. The advertising charge may be levied only in areas to which the rules and conditions for siting small structures or landscape architecture features, advertising boards or installations and fencing apply.

The advertising charge is levied from:

- the owners of the real estate or buildings or other structures, with the exclusion of land held under the right of perpetual usufruct,
- holders of the right of perpetual usufruct to land,
- certain holders of the real estate or buildings or structures,

if advertising boards or installations are located on this real estate or on these buildings or structures, irrespective of whether or not an advertisement is displayed on the board or installation.

The new regulations refer to the definitions of an advertisement, advertising board, advertising installation or a signboard as formulated in the Spatial Planning Act.

The advertising charge comprises a fixed component and a variable component. The fixed component is a flat amount determined by the local authority (up to PLN 2.50 per building or structure). The variable component will depend on the size of the surface of the advertising board or installation used to display an advertisement (up to PLN 0.20 per square metre, per day). It is worth stressing that **the amount of the real estate tax paid on the advertising board or installation is credited towards the advertising charge payable on the advertisement.**

The advertising charge is not collected if the advertisement cannot be seen from public space, or if it is a signboard (provided it complies with the rules and conditions for situating the relevant type of structures) or is required by law. The advertising charge is not collected either if the only purpose of the advertisement is to spread information that sustainably commemorates individuals, institutions or events, or information of a religious nature or related to the activities of churches or other religious associations, provided it is located within the borders of areas used as places of worship or religious activities or cemeteries.

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