

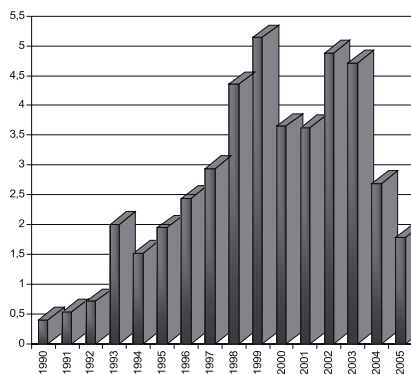
Elżbieta Jasińska\*, Joanna Klajn\*

## The Principles of Property Purchasing by Foreigners in Poland\*\*

### 1. Introduction

The Polish real estate market is attractive for foreign investors, especially because of low prices as for European markets. The Accession Treaty and relating to it freedom of property purchasing by citizens of European Economic Area (EEA) caused the circle expansion of people, who are exempt from obligation of obtaining the proper Minister of Interior and Administration permission for property purchasing.

The act which regulate these issues is still valid *The act about property purchasing by foreigners* from 24<sup>th</sup> of March 1920 with later changes, although according to this act, it is required from foreigners getting permission for property purchasing, but this duty doesn't concern EEA's citizens and businessmen, with some exceptions, which are going to be discussed in further part of the article. Figure 1 shows time changes of areas sold foreigners in thousands of hectares.



**Fig. 1.** The agricultural property purchasing by foreigners in 1920–2005

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\* Faculty of Mining Surveying and Environmental Engineering, AGH University of Science and Technology, Cracow

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In 2003 there were sold 10 times as many areas as on the beginning of the nineties, but at the same time there was noticed downward tendency in relation to 1998–1999 years, when Polish land focused the biggest of attention of foreigners. On this situation has certainly influence the act which limits property purchasing by foreigners. In 2005 there was noticed general growth of investments on real estate market, so far the biggest interest is in apartments rather than lands. From 2002, the total area of sold lands is decreasing every year.

## 2. The European Economic Area privileges

As a result of Poland's accession to European Union on the 1<sup>st</sup> of May 2004, the subject of the bigger interest became the problem of property purchasing by citizens and businessmen of European Economic Area.

Poland as a member of European Union, is obligated to obey community law, as a result of it, is the rule of capital flow freedom, which concern financial transactions, including the property transactions freedom. From this it follows that EEA's citizens and businessmen are able to purchase properties without obtaining permission from

The proper Minister of Interior and Administration. However, the deviation from this rule, are transactions related to agricultural and forest real estate and second houses. In the earlier form of the act, in this group there were also investment properties, but after many negotiations the obligation of permission obtaining was removed. According to agricultural and forest properties, it is required to get permission during 12 years period time from the day of Poland's accession to European Union, while in case of buying second house it is 5 years period time from that date. EEA's citizens buying agricultural properties are not obligated to get permission, if for 7 years from the date of lease contraction they lead personally agricultural activity and legally live in Poland. It's related to the properties located on areas: dolnoslaskie, kujawsko-pomorskie, wielkopolskie, zachodniopomorskie provinces. On the other area in Poland it is 3 years period time.

In 2005 EEA's citizens were particularly interested getting permission for property purchasing which are located in provinces such as:

- dolnoslaskie – 56.15 hectares;
- lubuskie – 32.37 hectares;
- warmińsko-mazurskie – 31.61 hectares;
- pomorskie – 29.75 hectares;
- lubelskie – 29.14 hectares.

Buying second house by EEA's citizen, who legally and continuously live at least 4 years on Poland territory or who's buying the house for business activity like tourist services, exclude this person from getting the permission.

In 2005 the biggest interest of buying second house was monitored in provinces such as:

- wielkopolskie – 2.365 hectares;
- dolnoslaskie – 2.008 hectares;
- slaskie – 1.903 hectares;
- zachodniopomorskie – 1.634 hectares;
- mazowieckie – 1.521 hectares;
- lubuskie – 1.516 hectares.

The people who the most often where applying for it in 2005 where from:

- Germany – 76 permissions,
- Great Britain – 9 permissions,
- Sweden and Austria – 7 permissions each of them.

The permission for property purchasing is given in the form of administrative decision by the proper Minister of Interior and Administration, if there won't be an objection from the Minister of National Defence and the proper Minister of Agriculture and Rural Development.

Above mentioned transitional periods in getting agricultural and forest properties or second houses, are the longest from among the other EU countries. They enable the control of properties transactions, the protection from unexpected growth of prices, speculations on real estate market in the range of prices surge and keep the prices on the level which make possible buying land by polish citizens.

Considering the problem of agricultural and forest purchasing, we should defined these expressions. According to article no 46 of The act from 23<sup>rd</sup> of April 1964 *Civil code*: "Agricultural properties (agricultural lands) are properties, which are or can be use in productive activity in agricultural, in the range of vegetable and animal production, not excluding gardening, fruit-growing and fishing production".

Agricultural and forest properties are the lands which are marked in cadastre as agricultural lands and forest and wooded lands. The agricultural property should comply with condition, defined in article no 2 *The act from 11<sup>th</sup> of April 2003 about agricultural structure forming*, which is their appropriation in local area development plans for rural use.

Foreigners buying agricultural properties are obligated to obey the rules resulting from mentioned above *The act about agricultural structure forming*, where the aim is provide well qualified people for running farms. The act determined people, who have buying preferences according to agricultural properties.

In 2005 The Minister of Interior and Administration gave EEA's foreigners 174 permission for buying agricultural and forest properties, which total area amount to 241, 737 hectares, which make 85% of area of these properties and 47% of all given permissions.

Transitional periods, set for Poland, in the range of buying these properties, are related to foreigners, that is: physical persons, without Polish nationality, corporations with the seat abroad, non legal personality companies, above mentioned, which has offices abroad, set according to foreign state's legislation and legal personalities and commercial companies without legal personality with offices in Poland but controlled directly or indirectly by persons or corporations above mentioned.

It seems that the act protect agricultural and forest properties transactions, but it should be take under consideration the fact that there is some opportunity for buying agricultural and forest properties by corporations, where the greater shares belong to Polish citizens. Complying with all conditions, resulting from separate acts, they are able to purchase these properties, including second house, for the corporation's benefit. The corporation can convert into controlled company, where the better part of shares will belong to foreigners or fully will be taken over by these people without Polish participation, and real estate will be it's ownership.

The registry of all foreigners, who got permissions for properties purchasing, is keeping by The proper Minister of Interior and Administration.

### **3. The way of property buying by people from behind The European Economic Area**

Previous considerations concern buying properties by EEA's citizens. That's why in further part of this article, will be presented the way of property purchasing by foreigners from behind that group.

From these people is required permission for buying property in Poland, with some exceptions. The real estate, which are not covered this rule, are specified in article no 8 *The act about property purchasing by foreigners*. But there's also one more condition, determined in article no 8, saying, that dispensations don't relate to properties located in border zone and land over 1 hectare area.

Permission is given in the form of administrative decision and is valid for 2 years from the date of passing of decision. The foreigner has right to apply for "promise" which constitute engagement of permission passing. It takes place in situation when foreigner who are planning buying the property need legal basis, which guarantee getting permission for purchasing this property in further time. This document is valid through one year, and during this time period it's not allowed to refuse giving the permission, unless the facts of case important to decide in this question will change widely. In 2005 there were given 11 promises.

The next problem in this matter is the question of inheritance the properties in Poland by foreigners. In the case of testamentary succession, the person is obligated to get permission for buying this property. If there will be a refuse of giving this

decision, the ownership or leasehold will get persons, who are qualified to heritage form the act. The application for permission should be made in two years from the date of testament opening. In case of statutory succession by foreigner, it is not required to get permission.

#### 4. Administrative court's review

In case of complaints on administrative decisions and inaction of public administration authorities, judge the province administrative courts and Chief Administrative Court. The complaint can be filled by everyone, who has legal interest, and also prosecutor, ombudsman and social organization in the range of its statutory activity according to legal interests other people.

In 2005 province administrative court considered five complaints on decisions of the Minister of Interior and Administrative, given on the base of the act, where of: in two cases dismissed claims on decisions of permissif court, in two cases dismissed claims because of formal considerations, and in one case discontinued proceeding, because one side didn't undertake suspended proceeding in the statutory period of time. Besides, the court gave three decisions refusing stay of proceeding filed decision.

In 1991–2005 where filled 155 complaints to The Chief Administrative Court on 32 942 decisions given in these years by Minister of interior and Administrative, what means, that only 0.47% given decisions where filled. Detailed specification presents table 1. In 2005 there wasn't any cassation decision to The Chief Administrative Court from sentence or decision given by Providence Administrative Court.

**Table 1.** The amount of total claims (according to given decisions) filled to Administrative Court

The year	The amount of claims	The amount of decisions
1991	7	635
1992	4	1238
1993	14	1285
1994	9	1695
1995	1	1839
1996	16	2048
1997	7	2887
1998	12	3161
1999	9	3641

Table 1 cd.

The year	The amount of claims	The amount of decisions
2000	8	2606
2001	11	2525
2002	6	2909
2003	5	2822
2004	21	2518
2005	5	1133

## 5. Conclusions

*The act about property purchasing by foreigners* in present sound raised restrictions in real estate transactions according to EU citizens without exceptions covered transitional periods for agricultural and forest properties and second houses purchasing, negotiated in the process of Poland's accession to European Union.

The better part (over 81%) subjects, who bought properties in Poland on the base of transactions without obligation of getting permission are subjects from The European Economic Area. It's relating mostly to buying apartments in Poland and investment lands, but also for living for EEA's citizens who work and live in Poland.

Among foreigners, the biggest interested in buying polish properties are German. For 592 permission given to physical and legal persons they got 36.5% in 2005.

The most attractive are Silesia, Masovian, Great Poland, Varmia and Pomerania areas. EEA's citizens are got the biggest amount of given permissions in 2005 – 76%.

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