

SK&S – Legal Alert

Planned limitations in trade in real estate, as well as in the shares of companies which are owners and perpetual usufructuaries of agricultural real estate.

1. Work is underway in the Sejm (the Lower House of the Polish Parliament) on a government bill for an Act to withhold the sale of real estate of the State Treasury Agricultural Property Resource and on an amendment to certain acts (“Act”). The first reading of the bill has been completed – now work is underway in the Agriculture and Rural Development Commission. The bill has been given the parliamentary document number 293 – a link to the bill can be found here: <http://sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=293>.
2. Pursuant to the bill, the Act is to enter into force on 30 April this year. Taking into account the speed of the work to date, this is highly probable. At the same time, on 1 May 2016 the limitation will cease to exist regarding the acquisition of agricultural and forestry real estate in Poland by entities from countries of the European Economic Area (in practice, mainly from European Union Member States). New, further-reaching limitations following from the Act will replace the hitherto solutions.
3. The Act provides that:
 - a) agricultural real estate may, in principle, be acquired exclusively by individual farmers only up to an area limit of 300 hectares. This limit does not cover, *inter alia*, inheritance (by way of inheritance, agricultural real estate may be acquired also by a person who is not an individual farmer). However, in the case of acquisition of agricultural real estate by way of inheritance, Agencja Nieruchomości Rolnych (the Agricultural Real Estate Agency - “ANR”) will have the right to acquire such real estate – see c) below.
 - b) the ANR will have a pre-emptive right in the case of a sale of any agricultural real estate whatsoever (regardless of the area);
 - c) in the case of acquisition of agricultural real estate under another legal basis than a sale agreement (including other legal events, e.g. division, merger or transformation of

This information does not constitute legal advice. Should you have any questions or need for legal advice with regard to taking any possible restructuring steps prior to the entry into force of the Act, please contact counselor Janusz Siekański (tel. +48 22 608 70 57; email: janusz.siekanski@skslegal.pl) or counselor Łukasz Wyszomirski (tel. +48 22 608 73 21; email: lukasz.wyszomirski@skslegal.pl)



companies or a court ruling), the ANR will have the right to acquire this real estate for its cash equivalent;

- d) the ANR will have a pre-emptive right in the case of a sale of shares/stock (except for stock traded on a stock exchange) in a company being the owner or perpetual usufructuary of any agricultural real estate. Prior to availing of the pre-emptive right, the ANR will have the right to view the company's books and documents;
- e) in the case of an acquisition of shares/stock in a company being the owner or perpetual usufructuary of any agricultural real estate whatsoever, under an agreement other than a sale agreement or another legal event (a court ruling, division of a company, merger of companies, transformation, etc.), the ANR will have the right to acquire these shares for their cash equivalent. Prior to availing of the acquisition right, the ANR will have the right to view the company's books and documents;
- f) if, in a partnership being the owner or perpetual usufructuary of any agricultural real estate, the partner changes or a new partner accedes, then the ANR will have the right to acquire the agricultural real estate for its cash equivalent;
- g) the amount of a mortgage established on agricultural real estate cannot exceed the value of the agricultural real estate; the application for entry of the mortgage into the land and mortgage register will be accompanied by an estimate specifying the value of the agricultural real estate;
- h) the sale of agricultural real estate from the State Treasury Agricultural Property Resource will be withheld for 5 years.

4. From the point of view of individual groups of interested parties, the following practical effects of the Act are key:

- **parties to existing trusteeship relations** (foreign entities and trustees: Polish citizens and companies controlled by Polish citizens) **which would be dissolved after 1 May 2016** – in certain cases it will not be possible to dissolve trusteeship relations by way of a transfer in favor of the mandator of ownership or perpetual usufruct right to agricultural real estate or shares/stock in companies being the owners or perpetual usufructuaries of such real estate (the Act introduces the requirement that the acquirer of agricultural real estate be an individual farmer, and also limits trade in shares/stock of companies holding agricultural real estate);



- **investors who acquired agricultural land as an investment** – the Act restricts the group of potential acquirers of agricultural real estate to individual farmers, which will most likely reduce the value of the investment (limited demand for agricultural real estate) and its liquidity (limited possibility of selling real estate);
- **investors who intend to acquire agricultural land as an investment** – the Act restricts the possibility of further purchases (essentially, only individual farmers may make acquisitions);
- **all business undertakings (from the agricultural sector, but not only) operating in the form of companies** – if the assets of any company whatsoever include agricultural real estate (even a small area), following the entry into force of the Act, trading in the shares/stock of such company, as well as the performance of corporate acts (transformations, mergers and divisions), will be subject to limitations following from the rights of the ANR (pre-emptive right and right to acquire shares). Planned exemptions will cover, *inter alia*, trading in stock on the stock exchange. At the same time, disposal of agricultural real estate to e.g. target companies, will after 30 April 2016, be subject to limitations in view of the fact that essentially only an individual farmer will be able to acquire agricultural real estate (and not a target company);
- **all business undertakings (from the agricultural sector, but not only) which conduct operations as natural persons** – the possibility of transferring agricultural real estate to successors – by way of donation or inheritance – will, after 30 April 2016, be subject to limitations, i.e. will entail the emergence of a right for the ANR to acquire the real estate for its cash equivalent;
- **future mortgage creditors and debtors** – limited possibilities to establish a mortgage, in particular, e.g. a joint mortgage, on agricultural real estates as the mortgage amount cannot exceed the value of the real estate (potential limitations in the possibility of the owner of agricultural real estates to obtain financing and of the creditor obtaining security for receivables);
- **the lessees of ANR agricultural real estates** – as a result of the planned withholding of sale of the State Treasury's agricultural real estate for 5 years from the entry into force of the Act, entities leasing agricultural real estate from the ANR, whose lease will expire within these 5 years, will be exposed to the loss of the leased real estates if the ANR does not agree to extend the lease period (there will be no possibility to acquire these real estates).



5. Within the meaning of the bill, an agricultural real estate is a real estate which is or may be used to conduct a production activity in agriculture in the area of plant and animal production, including gardening, fruit farming and fish production. Those real estates are not agricultural for which the provisions of the local zoning plans (master plans) provide a designation for purposes other than agricultural. To evaluate whether a given real estate is an agricultural real estate, one should take into account in particular the determinations of the local zoning plan (if it applies), decisions on conditions for the construction and development of a site, the data from land and building records, as well as decisions permitting the exclusion of real estate from agricultural or forestry production.



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