

How to as a Foreigner Purchase Real Estate in Poland

- According to the New Regulations

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Real estate

Fastigheter

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Sammanfattning

Lagen om utlänningars köp av fastigheter i Polen trädde i kraft 24 mars, 1920 och detta är lagen som fortfarande gäller idag. Förändringar och tillägg har dock skett under årens lopp. Normaliseringen från 20 februari, 2004 är den senaste ändringen som var nödvändig att införa eftersom Polen hade krav på sig att anpassa landets lagar till EU:s regleringar inför inträdet den 1:a maj 2004. Syftet med normaliseringens införande var att förkorta och förenkla proceduren att som utlänning få tillstånd till köp av fastigheter i Polen. Även tillståndets giltighetstid förlängdes till 2 år. Varför processen ska gå snabbare är för att inrikesministern numer har krav på sig att undersöka de inkomna ansökningarna om tillstånd inom 2 månader. Förenklingen kommer sig av att inrikesministern även fick klara kriterier och styrmedel för vilka krav och villkor utlänningar borde uppfylla för att få ett tillstånd utfärdat, vilket han innan inte hade. Sedan införandet av normaliseringen finns det numer 5 villkor att uppfylla för att få ett förvärvstillstånd. Det måste finnas omständigheter som binder utlänningen till Polen på något av följande sätt, bl.a. att utlänningen har ett polskt medborgarskap eller härstammar från Polen, är gift med en polsk medborgare, har ett uppehållstillstånd under en angiven tid eller ett tillstånd för fast bosättning. Han/hon kan även anses bunden till Polen genom sitt företag, ekonomisk aktivitet eller jordbruksverksamhet. Om utlänningen inte uppfyller något av ovan nämnda villkor måste denne på annat vis (så som det sköttes innan 24 februari, 2004) visa på att det finns omständigheter som kopplar honom/henne till Polen. Ett villkor som alltid måste vara uppfyllt är att en utlänningens köp av fastighet inte får hota allmänhetens eller landets nationella säkerhet, den allmänna ordningen eller gå emot landets politik eller störa folkhälsan.

En ny term som infördes genom normaliseringen 2004 var köp av "ett andra hem" som fick definitionen; "en fastighet som är tänkt att byggas ut för boende - eller rekreations syften och som inte kommer att nyttjas av utlänningen som permanent boende". Köpet av "ett andra hem" måste vara av personlig betydelse och av stor vikt för utlänningens levnadsstandard och fastigheten får inte heller överstiga en total area på 0,5 ha. Vid köp av "ett andra hem" behöver man ett köpetillstånd, men detta behövs inte då man vid köpetillfället legalt bott i Polen i minst 4 år eller på den köpta fastigheten tänker driva ekonomisk aktivitet kopplad till turism.

En annan sak som infördes i samband med normaliseringen var att definitionen av en utlänning delades in i två kategorier; nämligen utlänningar som har medlemskap i EES, Europeiska Ekonomiska Samarbetsområdet, och de som inte har det. Skillnaderna och fördelarna med att vara en EES-medlem är att man då inte behöver söka köpetillstånd vid köp av fastighet i Polen. Det finns dock undantag från detta och dessa gäller köp av jord - och skogsmark, samt ett "andra hem". I dessa fall har en övergångsperiod satts, där tillståndskrav gäller 12 år från ingången i EU för skogs- och jordbruksmark och 5 år för köp av ett andra hem. Anledningen till att dessa övergångsperioder har införts är för att Polens fastighetspriser ännu inte kommit upp i samma nivå som europapriserna och detta ger dem en möjlighet att "komma ikapp". Ett annat undantag är att alla jordbruksfastigheter som överstiger 1 ha samt alla fastigheter, oavsett storlek, som ligger i närheten av de polska landsgränserna kräver tillstånd. Vid köp av en lägenhet i Polen krävs inget tillstånd.

Om man vill leda företag i Polen finns regleringarna för detta i lagen från 2 juli, 2004 om företagande, skötsel och nerläggning av företag på polskt territorium. Enligt denna lag har EES-medlemmar samma rättigheter som polska medborgare och även personer utan EES-medlemskap som har permanent uppehållstillstånd i Polen, en flyktingstatus eller är under tidsbegränsat beskydd i Polen.

När det kommer till skatter så är den vanligaste skatten i Polen omsättningsskatten, den så kallade VAT. Detta är en skatt på alla varor och tjänster och denna ligger på 22%.

Det polska fastighetssystemet, "księga wieczysta", genomgår just nu också stora förändringar. Från att vara ett system bestående av handskrivna register och inskrivningar håller det nu på att föras över till ett elektroniskt system. Detta beräknas vara klart omkring år 2013.

Rapporten börjar med kapitel 1 som innehåller en målbeskrivning samt metod, följt av kapitel 2 som ger läsaren lite bakgrundsinformation, bl.a. om de polska löneförhållandena och dagens fastighetspriser. Kapitel 3 är en överblick över alla lagar som refererats till och använts under arbetets gång, samt var man kan hitta dem. Kapitel 4, 5 och 6 innehåller en definition av en utlänning enligt polsk lag, vad som förändrades i och med normaliseringen av lagen om köp av fastigheter av utlänningar 2004, samt en beskrivning av vilka olika sorters fastighetsägande det finns i Polen. Kapitel 7, 8 och 9 innehåller en genomgång av som krävs för att få ett tillstånd att köpa fastighet i Polen och i vilka fall köparen undantas från detta krav, köp av ett "andra hem" samt köp av lägenhet. Kapitel 10 beskriver köp av jordbruksmark, kapitel 11 vilka regleringar som följer med drivande av ett företag, kapitel 12 vilka olika skatter samt kostnader som uppkommer vid fastighetsköp i Polen och kapitel 13 behandlar Polens fastighetssystem, den så kallade "księga wieczysta". Rapporten avslutas med en analys i kapitel 14, slutsats i kapitel 15 samt en källförteckning i kapitel 16.

Summary

The Purchase of Real Estate by Foreigners Act came into force on the 24th of March 1920. This law is still in force, but has undergone some changes and improvements over the years and was amended on the 20th of February 2004. This was necessary because of the requirement that Poland should adapt its national laws to the regulations of the European Union before becoming a member on the 1st of May 2004. The purpose of the amendment was to hasten and simplify the procedures whereby foreigners could obtain permits to buy real estate in Poland. The period of validity for such a permit was also prolonged to two years. The process is now supposed to be quicker because the Ministry of Internal Affairs and Administration has to examine incoming applications within two months of receiving them. The procedure was also simplified. By way of example the Minister of Internal Affairs and Administration was now given clear criteria as to what was required of foreigners in order for them to be granted a permit to buy real estate in Poland. The amendment stipulates five conditions that a foreigner must fulfil in order to get a permit. There must be circumstances that link the foreigner to Poland in one of the following ways: the foreigner must have Polish citizenship or be of Polish origin; the foreigner must be married to a Polish citizen; the foreigner must have a temporary residence permit; the foreigner must have a permanent residence permit. Foreigners can also demonstrate links to Poland via a company or through financial and agricultural enterprises. If a foreigner does not fulfil any of these requirements he must demonstrate in other ways that he has links to Poland. This was the procedure before the amendment of the 24th of February 2004 came into effect. A condition that always must be fulfilled is that the purchase of a real estate in Poland by a foreigner must not under any circumstances “threaten the country’s national security, public safety or public order or contravene the country’s politics and public welfare”.

As a result of the amendment, some new paragraphs were added to the original act from 1920. One of them concerns the purchase of a second home. This term was defined as “real estate which is intended to be developed for residential or recreational purposes and which will not be used by a foreigner as a permanent living residence”. The purchase of a second home must be of personal importance for the buyer and satisfy a vital necessity in his/her life. The real estate may not exceed an area of 0.5 ha. When buying a second home a permit is required, but this is not needed if the buyer, at the time of the purchase, has legally lived in Poland for at least four years, or intends to conduct a business connected to tourism on the land in question.

Another thing that was changed with the amendment was that the definition of a foreigner was divided into two categories: foreigners who belong to the European Economic Area (EEA) and those who do not. The advantage of belonging to the EEA is that it is no longer necessary to apply for a permit when buying a real estate in Poland. There are however exceptions to this and these apply when purchasing a forest, agricultural real estate or a “second home”. In these cases there is a transitional period. The requirement to obtain a permit applies for twelve years from entering the EU with respect to forest and agricultural land and five years with respect to the purchase of a “second home”. The reason for these transitional periods is that Poland’s real estate prices, although they have risen, are still lower than in many European countries and this will enable Poland to “catch up”. Another exception is that all agricultural real estates exceeding 1 ha and all real estates, no matter their size, that are located close to the country’s borders, require a permit. When buying an independent dwelling such as an apartment, a permit is not required.

For those wishing to conduct a business in Poland, the relevant regulations concerning the commencement, running and terminating of all businesses conducted on Polish territory are contained in the act of the 2nd of July 2004. According to this act all citizens of states belonging to the EEA have the same rights as Polish citizens. This also applies to people that are not citizens of states belonging to the EEA, but who have a permit to settle, have refugee status or have a temporary permit in Poland.

When it comes to taxes the most common tax in Poland is VAT which is a tax on all goods and services at a standard rate of 22%.

The Polish land register system, "księga wieczysta", is also undergoing change. Having been a register of handwritten documents, it is now being transferred to an electronic system. This should be completed by 2013.

The report starts with chapter 1 which describes the aim and methods used in writing this report, followed by chapter 2 which gives the reader some background information, including the levels of Polish salaries and the current real estate prices. Chapter 3 is an overview of all the laws referred to and used through out the work and where they can be found. Chapters 4, 5 and 6 define a foreigner according to Polish law, describe the changes that have occurred since the amendment to the law about the purchase of real estate by foreigners was added in 2004 and describes what forms of real estate ownership exist in Poland. Chapters 7, 8 and 9 describe the requirements for obtaining a permit to buy a real estate in Poland and in which cases the purchaser is excepted from this obligation. The purchase of a second home and the purchase of independent dwellings, such as apartments, is also dealt with. Chapter 10 describes the purchase of agricultural real estates, chapter 11 the regulations connected with the running of a business in Poland, chapter 12 what kind of taxes and costs are incurred when purchasing real estate and chapter 13 describes the Polish land register system, or "księga wieczysta". In chapters 14 and 15 there is an analysis and the conclusion. Finally there is a bibliography in chapter 16.

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1. Introduction

1.1 Aim

The aim of this report is to give an overview of the real estate situation in Poland for foreign people: what to do, where to go, who to talk to find the regulations if you want to buy property.

The report mainly covers the legal proceedings and the Polish legal system, but also deals with the financial aspect; real estate taxes, transaction costs and so on. A brief historical section is included to give an overview of the Polish mentality and attitude concerning land.

The main topics and questions in this report are:

- If you want to buy real estate in Poland, which laws apply in specific cases
- Depending on your citizenship, and if you are a natural person or legal entity, what applies and where you can find the regulations
- The regulations concerning permits
- If you need to obtain a permit to purchase real estate, how to get it
- How to buy an independent residential premises, i.e. an apartment
- How the conducting of a business is regulated in Poland
- The Polish land register – how the system works

The analytical part of the report consists of:

- The market changes from a historical point of view
- Why invest in Poland
- What's attracting foreign investors today
- Speculations on what would happen after the entering in the European Union
- What has changed since the 1st of May 2004

1.2 Method

In writing this report I was assisted by professors at the law department of the Jagiellonian University in Kraków who helped me trace source material, most of which was available in the law library in Kraków. I read books and articles published both before and after Poland's entry into the European Union (1st of May 2004). This I did in order to be able to compare attitudes before and after the entry and see how many of the speculations actually came true. I have watched the Polish news to keep abreast of any changes and I read the daily news. The internet has in some cases been helpful when for example trying to find English translations of some Polish law expressions and also to find and read relevant law passages that are published on the web and in some cases translated into English. The reason why I chose to write this report in English is because it covers topics relevant for people of many different nationalities, not only Swedes. Also I would like the people at the Jagiellonian University that have helped me along the way, to be able to read the report.

1.3 Acknowledgements

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2. Poland, an introduction

Poland is in the middle of a period of change. The newest and biggest change occurred on the 1st of May 2004 when the country entered the European Union. This opened many doors. Historically Poland has a turbulent past filled with wars, persecutions and a period when it did not even exist as a country for many years. During the last ten years much has happened to make Poland a country viewed more as being in the heart of Europe, with big potential from an investor's point of view, rather than being considered part of the eastern bloc.

2.1 Map of Poland as it looks today



As the map shows, Poland is divided into 16 districts, voivodships. The capital, Warszawa, is located in the Mazowieckie district, while Kraków, which also is mentioned a couple of times in the report, is located in the district of Małopolskie, on the boarder to Slovakia.

2.2 Today's market

2.2.1 Salaries and apartment prices

The real estate market in Poland is in a situation never seen before, where the prices of new apartments have risen from 5 to 30 per cent, depending on the location. In the most attractive locations, such as Warszawa and Kraków, the price per square metre for high standard apartments is, for Polish conditions, sky high and still rising. The most exclusive apartments in the old town close to the main square in Kraków can cost up to 12 000 PLN per square metre (around 3 200 Euro).¹ This would make a 50 square metre apartment of this class and in this area, cost 600 000 PLN (around 160 000 Euro). The minimum salary in Poland was last year set to 650 PLN (around 180 euro) per month, which in 2006 was raised to almost 900 PLN (around 250 Euro). The average salary in 2005 was 2 320 PLN (around 640 Euro) per month.² In Warszawa the most prestigious apartments in the centre cost up to 15 000 PLN (around 4000 Euro) per square metre in 2004. An important point is that new apartments in Poland are sold without interior fittings: no flooring, bath or kitchen (refrigerator, stove and so on). This entails an additional cost of around 150 Euro per square metre.³ These numbers clearly show that the apartment prices for a Pole with an average salary are very high. Further away from the centre, the prices are lower: from 3000-6000 PLN (around 800-1600 Euro) per square meter. The greatest demand at the present time is for 50-square-metre apartments situated in 3-4 story buildings in calm and green areas in the centre. More than 50% of all the apartments on the market today are in the average price range of 3 000-3 500 PLN (around 800-950 Euro), but the further away from the city centre, the lower the prices.⁴ Although the prices are high, buyers, including those from foreign countries, are easily found. Most of the foreign buyers come from Ireland and England, but also from Spain and Italy, and increasingly from Israel, the Netherlands and from the Scandinavian countries.⁵ The demand is huge not only because many people expect that, after Poland's entry into the European Union, the same rise in prices as in a lot of other countries will occur, but also because the prices in Poland, despite the huge increase, are still much lower than in the above mentioned countries.⁶

2.2.2 Prices of agricultural land

The prices of agricultural land depend on the class of soil, the type of real estate and where in the country it is located. For example a 2.59 ha, class IV agrarian real estate located 14 km from the city Słupsk is sold for 7 PLN per square metre (around 2 Euro).⁷ A 2 ha agrarian real estate with water, electricity and sewage work in the same area is sold for 20 PLN per square metre (around 5.5 Euro). A 6700 square metre agrarian real estate with water and electricity is sold for 30 000 PLN (around 8 300 Euro), around 4.5 PLN (1.25 Euro) per square metre.⁸

¹ Interview with a sales person in a real estate firm in central Kraków, which chose to be anonymous

² http://www.pracuj.pl/kariera-zarobki-artykuly_6783.htm#top

³ http://info.realestate.com.pl/docs/Warsaw_Residential_Update_-_Spring_2004.pdf

⁴ http://www.krakow.pl/gospodarka/html/rn_2005.pdf

⁵ Interview with a sales person in a real estate firm in central Kraków, which chose to be anonymous

⁶ All the above mentioned prices are market prices from Warsaw and Kraków. Variations of these prices do occur in other parts of the country

⁷ <http://www.gieldaslupska.infocity.pl/details.asp?Id=466&s=&Start=0&Offset=10&Typ2=grunty&Miejscowosc=&Opis=>

⁸ www.gieldaslupska.pl

3. Laws that are referred to in the text

Many laws are mentioned and referred to in the text and here in summary form with an explanation: when they came into force, amendments, where to find them, and the abbreviations I chose to use when referring to them:

The laws used:

- The Act from 24th of March 1920, about the Purchase of Real Estate by Foreigners, in the text referred to as PurReEstFor. This act can be found in the Journal of Laws (Dziennik Ustaw) year 1996, No. 54, Item 245, web page: <http://bap-student.lex.pl/serwis/du/1996/0245.htm>. In this act you can find among other things the definition of a foreigner, who needs a permit, how to get it and what it should contain, which ties you need to have to Poland to get a permit, regulations about the purchase of a second home, agrarian real estate regulations, and so on.
- The Act from 20th February 2004, the amendment to PurReEstFor from 1920, in the text referred to as the amendment to PurReEstFor or just the amendment from 2004. This act can be found in the Journal of Laws, year 2004, No. 49, Item 466, web page: <http://bap-student.lex.pl/serwis/du/2004/0466.htm>. The act consists of all the changes in PurReEstFor. Sometimes it is just a change of how the sentence is put, sometimes the meaning, sometimes the whole paragraph is stricken and sometimes new articles or paragraphs added. One of the added paragraphs that is interesting for this report, is the one about the purchase of a second home. This paragraph took the place of paragraph 5 in article 1, PurReEstFor.
- In the Journal of Laws you can also find, in the Journal of Laws, year 2004, No. 167, Item 1758, the two above-mentioned acts put merged into one: the original act from 1920 with the amendment from 2004 inserted directly into the text. Web page: http://www.msp.money.pl/akty_prawne/obwieszczenie,marszalka;sejmu;rzeczypospolitej;polskiej,dziennik,ustaw,2004,167,1758.html
- The Act from 11th April 2003, about the Shaping of Agrarian Structures, in the text referred to as ShapAgrStruc. This act can be found in the Journal of Laws, year 2003, No. 64, Item 592, web page: <http://bap-student.lex.pl/serwis/du/2003/0592.htm>. This act describes different kinds of agrarian activities, the qualifications you need to conduct them and so on.
- The Economic Freedom Act from July 2nd 2004, can be read in the Journal of Laws, year 2004, No. 173, Item 1807, web page: http://www.msp.money.pl/akty_prawne/ustawa;z;dnia;2;lipca,dziennik,ustaw,2004,173,1807.html. This act regulates the undertaking, running and termination of all businesses conducted on Polish territory.
- The Act of Value Added Tax from March 11th 2004, can be read in the Journal of Laws, year 2004, No. 54, item 535, web page: http://www.msp.money.pl/akty_prawne/ustawa;z;dnia;11;marca,dziennik,ustaw,2004,054,535.html. This act regulates the taxes on all goods and services.
- The so called "Migration Act" from the 14th of February 2003, can be read in the Journal of Laws, year 2003, No. 42, Item 363, web page: http://www.msp.money.pl/akty_prawne/ustawa;z;dnia;14;lutego,dziennik,ustaw,2003,042,363.html. The act regulates the transfer of the handwritten land register into an electronic system.

4. A definition of a foreigner (within the meaning of the Act)

Since the amendment was made to the Act from the 24th of March 1920, PurReEstFor, the definition of a foreigner has changed and is, as from the 20th of February 2004, the following:

Article 1, paragraph 2, PurReEstFor:

- 1) A natural person who is not a Polish citizen/Polish national
- 2) A legal entity that has its seat/registered place of business abroad
- 3) A partnership of the persons referred to in subparagraphs 1 and 2, which have no legal status, has a registered place of business abroad and is incorporated under laws of foreign countries
- 4) A legal entity and a commercial partnership which has a registered place of business in the Republic of Poland and is controlled directly or indirectly by persons or partnerships referred to in subparagraphs 1 and 3

Furthermore the definition of a foreigner was split into two categories; the citizens of countries that are members of the European Economic Area, EEA⁹, and other foreigners. The difference is that EEA nationals do not need a permit when purchasing a real estate in Poland. There are of course some exceptions when even they need a permit, i.e. when buying agricultural real estate, a forest or a second home, but these regulations are only valid during a transitional period (12 years for forest and agricultural real estate and 5 years for a second home). After this period the real estate market for the EEA nationals is as opened for them as it is for the Poles.

⁹ The EEA was created in 1992 and was then composed of 15 countries with a membership in the European Union but also Norway, Island and Lichtenstein. On the 14th of October 2003 additionally ten countries (future members of the EU) signed the papers. Switzerland did not sign but is currently in discussion with the European Union and EEA, about the possibility of buying real estate in Poland by members of the EEA in comparison to citizens of Switzerland.

5. What changed with the amendment of 20th February 2004

As Poland entered the European Union on the 1st of May, 2004 and accepted the new common legislation, it became necessary to have many of the country's laws changed and adapted to the new membership. Among others, on the 20th of February, 2004, the Act about purchase of Real Estate by Foreigners from the 24th of March 1920 was changed.

The update brought many essential changes, including the speeding-up of the procedure for getting the permit for foreign people to buy real estate in Poland. The validity of the permit was also extended to two years. Other things that were added and changed was that the Minister of Internal Affairs and Administration now got clear criteria as to what kind of requirements the foreigner should fulfil in order to get a permit to buy a real estate in Poland. Furthermore the definition of a foreigner was split into two categories; the citizens of countries that were members of the European Economic Area, EEA, and other foreigners.¹⁰ To step by step decrease the restrictions of real estate purchases in Poland by foreigners awakes strong feelings among Poles and the Polish community and always will. Polish history is very turbulent and tragic and one must remember that this is deeply rooted in every Pole. Given the fact that, not long ago, Poland was divided between other countries and did not exist as a state for over 100 years, shows why the Polish community might be afraid of being "bought out" by foreign investors, until there no longer exists any Polish-owned land in Poland¹¹. However, at least for the moment, this fear is not well founded because statistics show, that from the year 1991-2003 the amount of land bought by foreigners in Poland was 0,1093 per cent of all Polish territory.

The amendment from the 20th February 2004 was made to simplify and quicken the administrative process and to get an objective criterion for giving out permits. Another term that was introduced in this amendment was the phrase "purchase of a second home" which got the definition; "a real estate which is intended to be developed for residential or recreational purposes and which will not be used by a foreigner as a permanent living residence". There were however some difficulties in interpreting this phrase because it should not be interpreted word by word, but in a legal sense. The phrase "purchase of a second home" is only a name for it, but it could in fact also be a real estate without any buildings, i.e. an undeveloped real estate.¹²

¹⁰ The book "Cywilnoprawny obrót nieruchomościami przez cudzoziemców" (po wejściu Polski do Unii Europejskiej)", 2004, written by Józef Jan Skoczylas

¹¹ Article 1a, paragraph 5, in the law of 24th of March 1920 with amendments.

¹² The legal journal "Rejent", nr 5, May 2005, article by Arkadiusz Bereza.

6. The forms of real estate ownership in Poland

In the Polish legal system there are three different groups of legal rights concerning the holding of real estate, namely the “real rights”, “limited real rights” and “contractual rights”.¹³ There are two forms of real estate ownership in Poland that are similar to those in other countries, and these are the following:

- Ownership (real rights), equal to “freehold”
- Perpetual usufruct (limited real rights), equal to “leasehold”.
This right is valid for a minimum of 40 years and maximum 99, with the possibility of renewal. The holder of this type of right pays annual perpetual-usufruct fees to the owner (or the municipality or State Treasury). Buildings and other structures that are raised on the land with a perpetual usufruct, become the property of the perpetual usufruct holder.

Both these forms of property ownership can, according to the Polish law, be used as a loan guarantee/mortgage. The ownership of real estate is freely transferable, although the transfer must be executed in the form of a notarial deed, which later needs to be entered in the Land and Mortgage Register. In the Polish Civil Code there are a number of limited rights described i.e. mortgages, usufruct rights on the property of others, ownership rights to cooperative flats; to co-operative commercial premises and to co-operative single family houses.

- The third form of legal right concerning the holding of real estate is the contractual property right, or in other words leases. This includes najem and dzierżawa:
 - Najem is when the landlord grants the tenant the use of premises for a fixed period of time (not longer than 10 years), or for an unspecified period, in exchange for rent.
 - Dzierżawa is when the landlord grants the tenant the use of land and the right to collect the profits connected to the land for a fixed period of time (not longer than 30 years), or for an unspecified period, in exchange for rent.

¹³ Report “How to do business in Poland” published by the Ministry of Economic Affairs, 2005.

7. Obtaining a permit

Before the amendment to the act from 24th of March 1920 about the purchase of real estate by foreigners was taken in force, the Minister of Internal Affairs and Administration could freely decide who should get a permit to buy a real estate and why. There were no proper laws or sets of conditions applicable. For Poland to be able to meet the standards of the European Union, there needed to be.

7.1 The requirements and conditions of obtaining a permit

In the new act from 20th of February 2004 the terms are clearly set and say that for a foreigner to get the permit to buy real estate in Poland he/she must by the circumstances be tied to Poland in one of the following ways:¹⁴

- The foreigner must have a Polish citizenship or be of Polish origins
- Be married to a Polish national
- Have a permit to live in Poland for a determined time or have a permit to settle down
- Have a membership in a organization that is managing entrepreneurs
- Be performing an economical or agricultural activity on Polish soil, according to Polish law¹⁵

The criteria mentioned above apply to all foreigners, meaning also EEA nationals when they buy real estate for which they need a permit, i.e. agrarian real estate, forest or a second home. To get permission to buy real estate from the Minister of Internal Affairs and Administration you only have to fulfil one of the requirements.¹⁶

The definition of a foreigner has been changed and is as from the 20th of February 2004 not only a natural person without Polish citizenship, but also a legal entity registered abroad, a partnership without a legal personality, i.e. a personal partnership that is registered abroad, as well as a legal entity and any partnership that is not a legal entity that is based on Polish soil and subject to Polish laws and regulations.

If a foreigner does not meet any of the requirements above, the procedure prior to the adoption of the law of 20th February 2004 applies: he must in another ways show that there are circumstances that affirm his links to Poland.¹⁷ Given the fact that most foreigners do not fulfil the requirements of showing a link to Poland, the criteria by which decisions are made are primarily whether the purchase of a real estate by a foreigner would threaten the country's national security, public safety or public order, and whether it would threaten the country's politics and public health¹⁸.

¹⁴ Article 1a, paragraph 2, items 1-5, PurReEstFor

¹⁵ Article 1a, paragraph 1, items 1-2, PurReEstFor with amendments, that says that there can not be any probability of threat to national security, public safety or public order and that the foreigner must show the existence of circumstances confirming his/her ties with Poland

¹⁶ The book "Cywilnoprawny obrót nieruchomościami przez cudzoziemców" (po wejściu Polski do Unii Europejskiej)", 2004, written by Józef Jan Skoczylas

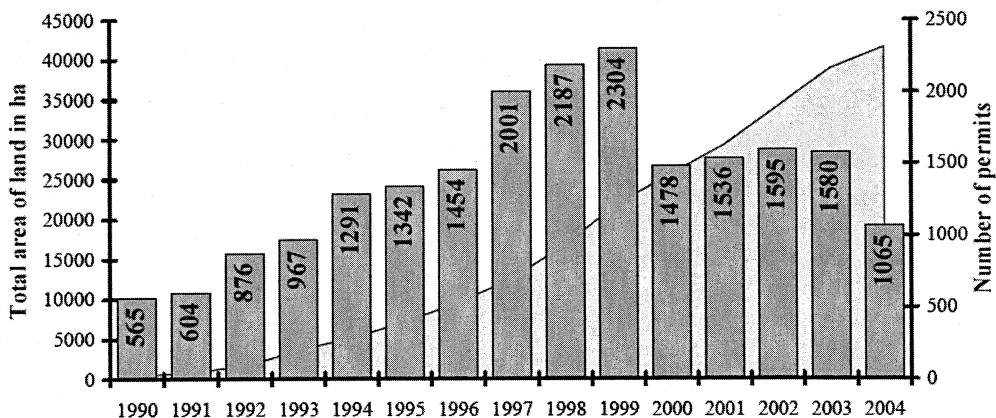
¹⁷ Article 1a, paragraph 1, item 2, PurReEstFor with amendments

¹⁸ Article 1a, paragraph 1, item 1, PurReEstFor with amendments

7.2 Statistics concerning permits issued to foreigners

In 2004 the Ministry of Internal Affairs and Administration issued 1065 permits for foreigners to purchase real estate in Poland. Most of these (619 permits) were given to companies which were interested in investing in Poland. 173 of the permits were given to purchasers who wanted to buy shares or stakes in Polish companies owning real estate in Poland.

7.2.1 Land purchase permits granted to foreigners (graph)



Source: Ministry of Internal Affairs and Administration, 2005

The graph shows the number of permits issued for the purchase of real estate as well as the total amount of land covered by the permits. As seen in the graph, the total area of land owned by foreigners is constantly growing. Why the amount of permits issued decreased in 2004 can easily be explained by the fact that Poland entered the European Union in May that year, making it unnecessary for EEA nationals to obtain a permit in most cases.¹⁹

¹⁹ Report "How to do business in Poland" published by the Ministry of Economic Affairs, 2005

7.3 An application for a permit should contain information about

- The applicant and his legal status;
- The real estate to be purchased and its designation;
- The seller;
- The legal form of real estate purchase;
- The purpose of the property purchase.

Along with the application the foreigner must attach documents in support of what is stated in the application and proving his/her ties with Poland, as well as other documents showing that the real estate will be purchased in a proper manner. The application must be in Polish and all attachments in foreign languages must be translated into Polish by a certified translator.

The Minister of Internal Affairs and Administration should, according to the act of 24th of March 1920 and its amendments, examine the application within two months. According to the same act, the permit is valid for two years from the date of issue and a binding purchase agreement should be made and executed within that time limit. The purchase of real estate must be executed in a notarised form.

7.4 Real estate purchases that require a permit

A permit is always required when buying a real estate, i.e. the buying of ownership title or perpetual usufruct right to a real estate. Applications are made to the Minister of Internal Affairs and Administration. There are some exceptions to the obligation to get a permit, which will be discussed later.

A permit is required in the following cases:

- Purchase of real estate
- Purchase, or taking up of shares in a commercial company which has a registered place of business in the Republic of Poland and is the legal owner or has perpetual usufruct of the real estate.²⁰

A permit is required if, by purchasing shares in a company which is the legal owner or has perpetual usufruct of real estate, a foreigner will take control of that company, or if shares in an already-controlled company are bought or taken up by a foreigner who is not the company's shareholder²¹. A controlled company is a company in which a foreigner, or foreigners, directly or indirectly, hold more than 50% of the votes, or has a dominating position. The Minister of Internal Affairs and Administration may grant the foreigner a permit to purchase real estate or shares in a company that owns real estate if there is no probability of a threat to national security, public safety or public order and if the foreigner can show the existence of circumstances confirming his ties with Poland (see "the requirements and conditions of obtaining a permit"). No legal acts or ownership titles or perpetual usufruct rights may be made without first getting a permit from the Minister of Internal Affairs and Administration. If the act is not followed, the purchase of real estate or shares by a foreigner is invalid, or in other words, null and void.

²⁰ Article 3e, paragraph 1, PurReEstFor, in the Journal of Laws, year 1996, No. 54, Item 245

²¹ Article 3e, paragraph 2, PurReEstFor, in the Journal of Laws, year 1996, No. 54, Item 245

7.5 Real estate purchases that are excepted from the obligation of obtaining a permit

There are quite a few real estate purchases that are excepted from the obligation of applying for a permit at the Minister of Internal Affairs and Administration, but this never applies to real estate situated in the vicinity of the Polish state borders or agricultural land of more than 1 ha. The purchases that are excepted are, according to article 8; paragraph 1, item 1-5 and paragraph 2, item 1-2, in the act from 24th of March 1920 with amendments, the following:

Article 8, paragraph 1, a permit is not required in reservation to paragraph 3:

- 1) When purchasing an independent residential premise, as defined in the act concerning ownership of premises from 24 June 1994
- 1a) Item one above includes the purchase of individual premises designated as a garage or a share in such premises if this is connected with satisfying the housing needs of the purchaser, or the owner of real estate, or an independent residential premises.
- 2) Purchase of real estate by a foreigner who has been living in Poland for at least five years after getting a residence permit or a permanent/long-term residence permit
- 3) Purchase by a foreigner whose spouse is a Polish citizen and who has lived in Poland for at least two years after getting a residence permit or a permanent/long-term residence permit, if the real estate will become a joint property of both spouses
- 4) Purchase of real estate by a foreigner if, on the day of purchase, the foreigner is legally entitled to inherit the assignor of the real estate, provided that the assignor was its legal owner or had perpetual usufruct for at least five years
- 5) Purchase by a controlled corporate entity, of undeveloped real estate in urban areas if their total area in the entire country does not exceed 0,4 ha

The above listed exceptions from the requirement of getting a permit do not apply to property located close to the country's borders nor if the total area of real estate destined for agrarian use, exceeds 1 ha. A permit may be refused only if there could be a threat to national security, social policies or public health.²²

²² Article 8, paragraph 1, item 3, PurReEstFor, in Journal of Laws, year 1996, No. 54, Item 245

7.6 Nationals of the European Economic Area (EEA)

On May 1st 2004, when Poland entered the European Union, the general rule that a permit is required for purchase of real estate by foreigner or shares in companies which are legal owners or have perpetual usufruct of real estate, ceased to apply to European Economic Area, EEA nationals. However there were some transitional periods set for the purchase of different kinds of real estate making it a “step by step” decrease of the permit requirement.

Transitional periods were set for the following real estate purchases:

- Purchase of agricultural and forest land – in this case a permit must be obtained for 12 years after Poland becoming a member of the EU (i.e. until 1st of May 2016)
- Purchase of a second home – you need to obtain a permit for five years after Poland becoming an EU member (i.e. until 1st of May 2009).

However, according to the Act of 24th of March 1920 with amendments, EEA foreigners will not need to apply for a permit during those transitional periods in the following cases:

- The purchase of a second home: if the purchaser has legally and continuously lived in Poland for at least four years
- Conducting business activities in the form of tourist services.
- The purchase agricultural land situated in the following voivodships; Dolnośląskie, Kujawsko-Pomorskie, Lubuskie, Opolskie, Pomorskie, Warmińsko-Mazurskie, Wielkopolskie, Zachodniopomorskie – after the end of a seven year period since the leasehold contract began (date of execution must be certified), if during that period they have personally conducted farming on the land in question and have legally lived on Polish territory
- The purchase of agricultural land in the following voivodships; Lubelskie, Łódzkie, Małopolskie, Mazowieckie, Podkarpackie, Podlaskie, Śląskie, Świętokrzyskie – after the end of a three year period since the leasehold contract began (date of execution must be certified), if during that period they have personally conducted farming on the land in question and have legally lived on Polish territory

8. Purchase of a second home in Poland

In the amendment from the 20th of February 2004²³, a 5th paragraph was added to the 1st article in PurReEstFor, the act about the purchase of real estate by foreigners, i.e. article 1, paragraph 5²⁴. This paragraph covers and gives a definition of the new phrase “the purchase of a second home”. A second home is, by this definition, real estate which is intended to be developed for residential or recreational purposes and which will not be used by a foreigner as a permanent living residence.

8.1 The regulations around the purchase of a second home

Article 1, paragraph 5, PurReEstFor covers both the purchase of real estate granting the title of legal owner, as well as the perpetual usufruct of a real estate and can not, according to the same paragraph, be used when buying independent residential premises.

The paragraph can only apply to:

- Foreigners (EEA nationals only)
- People with the legal status of a natural person

Therefore, if the natural person has, apart from his/her foreign citizenship, a Polish citizenship, the act is not applicable. From the 1st of May 2004, different transitional periods were applicable for EEA nationals when purchasing agricultural or forest real estate and a second home. During these transitional periods PurReEstFor will apply to them, but after that the same rules as for Polish citizens and nationals will apply. For example, the requirement of getting a permit when buying a second home is, according to article 8, paragraph 2, item 2²⁵, restricted to five years from Poland’s entry into the European Union. This means that after the 30th of April 2009, EEA nationals no longer need a permit to buy a second home in Poland. The group of foreigners that profit from this, and other privileges mentioned below, are the fifteen old member states of the EU, Norway, Island, Lichtenstein, and the nine new member states of the EU. This act is not applicable to Polish citizens.

8.2 Requirements

The character of the real estate purchased as a second home, can be both a developed real estate as well as an undeveloped one. When buying or planning to purchase a second home it should always be shown that permanent residence on the real estate is not intended and that it is only seen as a place for temporary residence or for recreational purposes, or that the real estate is not suited for permanent living. A purchased real estate or real estates with the character of a second home need to be of personal importance and satisfy a vital personal necessity. Therefore, the total area of the purchased land can not exceed 0.5 ha which is, once again, one of the consequences of Poland’s fear of land getting bought out by foreigners. However, according to the statistics coming from the Ministry of Internal Affairs and Administration, from the year 1991-2003, all the permits that were issued to make it possible for foreigners to purchase land left them owning 0.1093% of the territory of Poland.²⁶

²³ Journal of Laws, 2004, No. 49, Item 466 - <http://bap-student.lex.pl/serwis/du/2004/0466.htm>

²⁴ Journal of Laws, 1996, No. 54, Item 245 - <http://bap-student.lex.pl/serwis/du/1996/0245.htm>

²⁵ PurReEstFor, see the Journal of Laws, year 1996, No. 54, Item 245

²⁶ Monthly law journal, “Rejent”, May 2005, No. 5, “Purchase of a second home in the light of the Polish regulations” by Arkadiusz Bereza

8.3 Obtaining a permit

According to article 1a, paragraph 2, PurReEstFor, to get the permission to buy a second home from the Minister of Internal Affairs and Administration at least one of the following criteria must be fulfilled to demonstrate ties with the Republic of Poland:

- Have Polish citizenship or be of Polish origins
- Be married to a Polish national
- Have a permit to live in Poland for a specific time or have a residence permit
- Have a membership in a organization that is managing entrepreneurs
- Be performing an economical or agricultural activity on Polish soil, in accordance with Polish law

Furthermore the applicant must not cause:

- Any probability of threat to national security, public safety or public order

8.3.1 Two exceptions from the requirement of obtaining a permit

According to article 8, paragraph 2a, item 2, letter a and b, PurReEstFor, there are additionally two exceptions from the requirement of applying for a permit when purchasing a second home. The exceptions are:

- According to article 8, paragraph 2a, item 2, letter a, PurReEstFor, a permit is not needed if you are buying a real estate after having legally lived in Poland for at least four years. Your stay should be confirmed by the foreigner before a notary with the help of suitable permits and documents.
Although this regulation came into force on the 1st of May 2004, a foreigner may start the counting of this period as far back as year 2000.
- Letter b in the same article states that a permit is not needed when conducting economic activity connected with tourist services.²⁷

²⁷ Monthly law journal "Rejent", May 2005, No. 5, "Purchase of a second home by foreigners in the light of the Polish regulations" by Arkadiusz Bereza

9. Purchase of independent residential premises

When a foreigner from an EEA member state wants to buy independent residential premises, i.e. an apartment, there are no regulations preventing this. Practically all that is needed is a passport. No permit is required. Independent residential premises are, according to article 2 in the act concerning ownership of premises²⁸, an apartment in a part of a building clearly marked off by permanent walls, or a unit of apartments meant for permanent living space for people, which, together with the supplementary spaces, satisfy their housing needs. The exception from the requirement to obtain a permit in article 8, paragraph 1, item 1, PurReEstFor, is justified with the fact that the maximum size of the owned premises is regulated. However this act does not exclude the possibility of the foreigner buying several independent residential premises in the same building. Therefore a situation may occur where the foreign buyer would end up owning all the living premises in the same building, thereby becoming the exclusive owner of the building without fulfilling the requirement of obtaining a permit. This action could however be considered null and void by circumventing the regulations in article 58, the Civil Code.

In article 8, paragraph 1, item 1a, PurReEstFor, (added in the amendment from 2004) there is another case that does not require a permit. This item says that a “purchase of individual business premises with a garage designation or a share in such premises if this is connected with satisfying the housing needs of the purchaser, the owner of the real estate, or an independent residential premise” does not require a permit. Article 8, paragraph 1, item 1a, came into effect on the 26th of April 2004 and is linked to the regulations in article 8, paragraph 1, item 1, PurReEstFor. It was logical to add item 1a because before the amendment a foreign purchaser was allowed to buy independent residential premises without a permit, but to buy the business premises e.g. a garage (in Polish “local uzytkowy”), often essential to satisfy the housing needs, he/she required a permit from the appropriate Minister.

The steps when buying an apartment in Poland:

- Contact and assign a realtor
- Find an appropriate apartment
- Have the money available or a granted loan
- Have a passport or other document that verifies your identity and is accepted internationally
- Sign the contract
- Get the papers looked over by a notary, i.e. be executed in a notarised form
- Get the purchase inscribed in the land register system, the “Ksiega wieczysta”

²⁸ See the Journal of Laws, year 1994, No. 85, Item 388 - http://www.msp.money.pl/akty_prawne/dziennik,ustaw,1994,0,0.html, with amendment year 2000, No. 80, Item 903 - http://www.msp.money.pl/akty_prawne/dziennik,ustaw,2000,0,0.html

10. The purchase of agricultural real estate

The definition of an agricultural real estate is, according to article 2, item 1, in the act about the shaping of agrarian structures, *ShapAgrStruc*, real estate that is or could be used for conducting farming and arable, plant or animal, activities, including gardening, orchards or fishery, but excluding those real estates that in the master plan are meant for other purposes than agrarian ones.

10.1 The applicable laws when buying agricultural real estate

The biggest exception when it comes to free land trading is mainly trade in agricultural real estate. This trade is heavily controlled because of the fear of Polish land being bought by foreign people. Therefore, if the real estate exceeds 1 ha a permit is required. Furthermore, if the real estate is located close to a border, its size does not matter, and a permit is always required. There are also regulations about who can buy agricultural real estate and how it should be kept and formed in the act concerning the shaping of the agrarian structures from 2003. When buying an agricultural real estate, apart from these requirements for foreign people, the same laws as for Polish people are in force.²⁹

The trade in agricultural land by foreigners is regulated by:

- The act from march 24th 1920 concerning purchase of real estate by foreigners³⁰
- The act from august 21st 1997 concerning real estate trade with special regulations in relation to the acts from 1920 (article 2, item 1)
- The act from September 28th 1991 concerning forests
- The act from October 19th 1991 concerning the keeping of the countries agricultural real estate
- The act from April 11th 2003, concerning the shaping of the agrarian structures³¹

If the agricultural real estate does not exceed 1 ha or is not located by the country's borders, the applicable regulations can be found in the original act from 1920, *PurReEstFor*³², article 8. A permit to buy an agricultural real estate is not needed for EEA nationals and:

- If agricultural land is bought in the following voivodships: Dolnośląskie, Kujawsko-Pomorskie, Lubuskie, Opolskie, Pomorskie, Warmińsko-Mazurskie, Wielkopolskie, Zachodniopomorskie – after the end of a seven year period since the execution of a lease contract (date of execution must be certified), if during that period the applicant has personally conducted farming on the land in question and has legally lived on Polish territory
- If agricultural land is bought in the following voivodships: Lubelskie, Łódzkie, Małopolskie, Mazowieckie, Podkarpackie, Podlaskie, Śląskie, Świętokrzyskie – after the end of a three year period since the execution of a lease contract (date of execution must be certified), if during that period the applicant has personally conducted farming on the land in question and has legally lived on Polish territory

²⁹ The Journal of Laws, year 2003, No. 65, Item 592 - <http://bap-student.lex.pl/serwis/du/2003/0592.htm>

³⁰ The Journal of Laws, year 1996, No. 54, Item 245 - <http://bap-student.lex.pl/serwis/du/1996/0245.htm>, in article 1, paragraph 2 and article 1a, *PurReEstFor*

³¹ The journal of Laws, year 2003, No. 64, Item 592

³² The Journal of Laws, year 1996, No. 54, Item 245

- If the applicant has lived on Polish territory for at least 5 years after getting the “karta stałego pobytu” – residency permit
- If the buyer is a spouse of a Polish citizen and lives on Polish territory for at least 2 years from getting his or her residency card, and if the real estate after the purchase would become their joint possession.³³

10.2 The act concerning the shaping of agrarian structures

The rules concerning the shaping of agrarian structure were put in the Journal of Laws the 11th April 2003. They were presented by the Ministry of Agriculture and the Development of Rural Areas and came into effect on the 16th of July 2003, the main reason being to establish rules for foreigners interested in buying agricultural real estate in Poland. In article 1a, paragraph 6, PurReEstFor with amendments,³⁴ it is said that the rules in this act only apply in addition to the act concerning purchase of real estate by foreigners³⁵ and that they both must be followed. The rules in the act concerning the shaping of agrarian structure should, according to article 1, ShapAgrStruc, have the following goal:

Article 1, ShapAgrStruc:

- 1) To improve the structure of agrarian areas
- 2) Counteract excessive concentrations of agricultural real estate
- 3) Give the assurance that the agricultural activities in the agrarian areas are conducted by people with the required qualifications

10.3 Qualifications to lead an agrarian business/activity

Every person that is conducting agrarian activities must have suitable qualifications and these can be either theoretical or practical. The theoretical qualification is the one awarded after an agrarian education (article 6, par. 3, item 1, ShapAgrStruc) while the practical is obtained from personal experience of leading an agricultural business or having worked in one for at least five years (article 6, par. 3, item 2, ShapAgrStruc). According to article 7, paragraph 2, item 1 and 2, ShapAgrStruc, qualifications must be demonstrated. The theoretical one is confirmed with a certificate or diploma from a school showing the applicant's title and affirming the qualifications (article 7, par 2, item 1, ShapAgrStruc) while for confirming the practical experience a testimonial is needed that is verified by the town's mayor or a contract of employment should be presented (article 7, par 2, item 2, ShapAgrStruc). Since Poland entered the European Union, certificates proving qualifications can also be documents given out by the proper institutes in the membership countries of the EEA.

³³ The book "Prawo rolne", second edition, 2005, by Andrzej Stelmachowski

³⁴ The Journal of Laws, year 2004, No. 167, Item 1758 –

http://www.msp.money.pl/akty_prawne/obwieszczenie;marszalka;sejmu;rzeczypospolitej;polskiej,dziennik,ustaw,2004,167,1758.html

³⁵ The Journal of Laws, year 1996, No. 54, Item 245, - <http://bap-student.lex.pl/serwis/du/1996/0245.htm>

10.4 Agricultural activities

There are two kinds of agricultural activities requiring different regulations for the real estate, namely; the agricultural activity as a family business and agricultural activity that is not.

The family business must fulfil two criteria; it must be lead by an “individual farmer” and in total the agricultural area can not exceed 300 ha. An individual farmer is described in article 6, paragraph 1, ShapAgrStruc, which says the following:

- An individual farmer can only be a natural person, who is either the owner or the leaseholder of the agricultural real estate with a maximum total area of 300 ha. The person needs to live in the same municipality as at least one of the real estates that are included in the business, and on the basis of having the required qualifications; personally lead the agrarian activity.³⁶

To personally lead the business does not necessarily include any physical work but simply being in charge, taking all the decisions, even ordering people to do the actual work from a distance through phone or fax. Nevertheless a document proving personal leadership of the agrarian business is required and this must be verified by the town’s mayor. The agricultural land with the family business does not consist of only the land owned by it, but also rented land.³⁷

³⁶ Article 6, paragraph 1 in the Act about the Shaping of Agrarian Structures (Journal of Laws.2003.64.592)

³⁷ The book “Cywilnoprawny obrót nieruchomościami przez cudzoziemców” (po wejściu Polski do Unii Europejskiej)”, 2004, by Józef Jan Skoczylas

11. The Economic Freedom Act; the law concerning running a business in Poland

The legal act that governs all business activity in Poland is the economic freedom act of July 2nd 2004. This act regulates the undertaking, running and termination of all businesses conducted on Polish territory.

11.1 The regulations concerning running a business in Poland

Foreigners from the European Union and European Free Trade Agreement zones that belong to the European Economic Area, EEA, can conduct and run business in Poland on the same grounds as Polish citizens.³⁸ The same rules also apply to foreigners that live outside the EEA who:

- Have received a permit to settle down on Polish territory
- Have a refugee status or permission to stay in the republic of Poland
- Have been given temporary protection in Poland

The rents in the best, so called A-class, office buildings in for example Kraków range from 13-14 Euros per square metre and month, where as the rent for the B-class office buildings is around 9-12 Euros per square metre and month. The prices depend on the standard of the buildings.³⁹

The regulations in the economic freedom act do not regulate agrarian manufacturing businesses, the keeping and breeding of animals, gardening, forestry, inland fishery, nor do they regulate farmers renting out rooms, sales of home cooked meals, or other businesses that are connected with tourism activities.⁴⁰

11.2 Poland, increasingly popular with investors

Poland is becoming a popular country to invest in. In 2004 purchase permits were made out so that approximately 2 500 ha of land was purchased by companies investing in Poland. The same year 446 foreign natural persons received permits giving them a total area of 230 ha. The permits in 2004 were made out mostly for purchase of land in central and south-western Poland and the foreign purchasers were mostly companies and individuals from Germany and the Netherlands. According to the Ministry of Internal Affairs and Administration, foreigners were given permits to purchase 41 574 ha of Polish land from the year 1990 to 2004. Since 1st of May 2004, foreign persons and individuals from the EEA membership countries do no longer need to obtain permits to purchase real estate in Poland (in reservation to the exceptions). Therefore foreign persons in 2004, purchased 1 437 landed properties, together making up 1 412 ha of land, without the need for a permit.⁴¹

³⁸ Article 6, paragraph 1, the Economic Freedom Act -

http://www.msp.money.pl/akty_prawne/ustawa;z;dnia;2;lipca,dziennik,ustaw,2004,173,1807.html

³⁹ http://www.krakow.pl/gospodarka/html/m_2005.pdf

⁴⁰ Article 3, the Economic Freedom Act -

http://www.msp.money.pl/akty_prawne/ustawa;z;dnia;2;lipca,dziennik,ustaw,2004,173,1807.html

⁴¹ Report "How to do business in Poland" published by the Ministry of Economic Affairs, 2005

12. Taxes and costs

There are many costs and taxes involved when conducting a business or buying/selling a real estate in Poland. The VAT is the most common tax which is a tax on all goods and services, regulated by the Act of Value Added Tax of 11th March 2004.⁴² The new act concerning VAT came into effect on the day Poland entered the EU, on 1st of May, 2004 and has a basic rate of 22%. Another rate is the preferential rate of 7 % that applies to sales of certain agricultural goods, books, newspapers and some goods for children along with goods connected with health protection. The third rate is a zero-rate that applies to exports. Other services that are free from VAT are education, health and postal services. As in most European countries the VAT is refundable to foreign tourists leaving and exporting products from Poland.⁴³

12.1 Transaction costs

When purchasing a company or a property there are certain transaction taxes one has to pay. When purchasing a company you have to pay 1 % tax on the civil and legal proceedings on the company shares. When purchasing a property on the other hand there are more possibilities, either you buy:

- A land not intended for development:
 - Tax on civil and legal proceedings on company shares: 2%, No VAT
- Buildings with land or a vacant/available development site:
 - Sale by a VAT payer: 22% VAT, no other taxes
 - Sale by a non VAT payer: Tax on civil and legal proceedings 2%, no VAT
- Leasing a property: 22% VAT

There are also other additional transaction costs, when trading with real estates, namely:

- Permit fee (if needed), up to PLN 1400
- Court registration fees which vary, depending on the transaction. Up to PLN 20,000
- Notary fees: Varies, the fee is based on the value of the real estate⁴⁴
- Agent's fees:
 - When purchasing: 1–2% of the transaction value, usually paid by the owner
 - When leasing: 10–15% of the annual rent + VAT, usually paid by the owner

⁴² The Journal of Laws -

http://www.msp.money.pl/akty_prawne/ustawa;z;dnia;11;marca,dziennik,ustaw,2004,054,535.html

⁴³ Report "How to do business in Poland" published by the Ministry of Economic Affairs, 2005

⁴⁴ The maximum notary fee, when the value of the real estate is:

- Over PLN 10 000-30 000: PLN 310 + 2% of an amount bigger then PLN 10 000
- Over PLN 30 000-60 000: PLN 710 + 1% of an amount bigger then PLN 30 000
- Over PLN 60 000-1 000 000: PLN 1010 + 0,5% of an amount bigger then PLN 60 000
- Over PLN 1 000 000: PLN 5710 + 0,25% of an amount bigger then PLN 1 000 000

12.2 Property taxes

In Poland there are three different property taxes, namely;

- The real estate tax
- The perpetual usufruct tax
- The agricultural tax.

For the real estate tax the rate is determined by the local authority, where the maximum rate is set by the Minister of Finance every year. The perpetual usufruct tax is set to 3% of the value of the perpetual usufruct land used as commercial premises, and to 1% for residential land. The rate for the agricultural tax depends on the size of the property, the type, the class of the agricultural land and the tax district in which the real estate is situated.⁴⁵

12.3 Real estate taxes

The act that regulates the real estate taxes is the Act concerning Local Taxes and Charges from January 12th 1991. The act says that you have to pay taxes for all real estates within the limits defined in the official announcement of the Minister of Finance that is published in the juridical journal "Monitor Polski" every year. The annual tax rates are set by the local municipal government (in Polish "gmina") and can be different from area to area. In 2005 the maximum real estate tax rate for the following types of property was set to:

The 2005 Real estate annual tax rate per square meter:⁴⁶

- | | |
|---------------------------|-----------|
| • Residential buildings - | 0,54 PLN |
| • Commercial buildings - | 17,98 PLN |
| • Other buildings - | 6,01 PLN |
| • Commercial land - | 0,66 PLN |
| • Other land - | 0,32 PLN |

Considering that times are changing the Ministry of Finance plans to replace this tax with a so-called cadastre tax, .i.e. from being a tax related to the size of the property, taxes would be related to the property's value. Some preparations have already been done, but the introduction of the cadastre tax is predicted to not be taken in force earlier then in 2010.⁴⁷

⁴⁵ Report "How to do business in Poland" published by the Ministry of Economic Affairs, 2005

⁴⁶ Official announcement of the Minister of Finance on the 26th of October 2004

⁴⁷ Report "How to do business in Poland" published by the Ministry of Economic Affairs, 2005

13. Księga wieczysta – the Polish land register system - from handwritten documents to files in an electronic system

Księga wieczysta is the name of the Polish land register system. If translated word by word księga means a very old book, while wieczysta means perpetual. Every real estate should have a “book” like this and it is an official document in which basic information about a specific real estate and its legal status can be found. Until only recently all the land registrations in Poland were handwritten documents, but this system of information storage is now being changed. The general rule that all real estates should be inscribed in some kind of land register has not been fulfilled in Poland. The real estates without a land registration are not so many though, and they are steadily decreasing in numbers.

Here are some dates over the history of the Polish land register system:

- In 1946 the Law concerning the Polish land register came into effect and this started the collection of data about real estates that did not have a “land registration book” or where it had been lost or destroyed.
- In 1995 the work with making court registrations electronic started. The work was carried out as a collaboration between Norwegian and Polish judges, computer scientists and economists resulting in the creation of “Zespół Roboczy do Spraw Ksiąg Wieczystych”, meaning a Work Team for Land Registration Affairs.
- In 2001 a co-operation with Germany was initiated. This because of the similarity of land registration systems in Poland and Germany, but also because of Germany’s experience, in the beginning of the 1990’s, of creating an electronic land registration system and converting handwritten documents into electronic form.
- On the 14th of February 2003 a new act came into effect in Poland called the “Migration Act” covering the process and rules for converting the handwritten land registrations into a new electronic system.⁴⁸

Today the running of the land registry is conducted by a regional court of law. The “migration” i.e. the transfer of information from handwritten documents into an electronic system is lead by 60 appointed courts of law and 10 migration teams in Poland. The transformation is facing some problems, such as old and badly-preserved papers or bad handwriting, but it is important to remember that the information should not be changed in any way when transferred. The information should in the electronic system, as it did in the handwritten form, consist of four sections, where only the way it is handled in the electronic system changes, not the input.

The four sections contain inscriptions about:

- Section 1 - The real estate’s designation and the laws connected to the real estate
- Section 2 - The regulations of the ownership and perpetual usufruct
- Section 3 - The restraints concerning the use of the real estate, except for hypothecs, restraints of the disposal of the property and of the perpetual usufruct. There is also space for the inscriptions of other regulations and claims
- Section 4 - The registration of hypothecs

Part 3 and 4 may be free from inscriptions in situations when a real estate is not burdened

⁴⁸ The Journal of Laws, year 2003, No. 42, Item 363 -

http://www.msp.money.pl/akty_prawne/ustawa;z;dnia;14;lutego,dziennik,ustaw,2003,042,363.html

with anything, and has no restraints or hypothecs.

In the beginning of 2005 there was 1.5 million electronic registrations made in Poland. In all there are 17 million "land registration books" in Poland and it is estimated that the work of making them all electronic will be finished around 2013.⁴⁹

⁴⁹ The book "Ustawa o księgach wieczystych i hipotece", 2006, by Stanisław Rudnicki

14. Analysis

In writing this rapport in Kraków, Poland I got in contact with people from many different fields. I met and talked to law professors and law students at the Jagiellonian University, realtors in different firms all around Kraków and real estate sales people. From this I have gotten many different perspectives and views at the Polish real estate market of today, the future hopes, fears and thoughts about what changes, improvements or what worsening might come. I also read a lot of articles and books published both before and after Poland's entering to the European Union to get a general overview of the situation. When the Polish people voted about the entering to the European Union, almost 77.5% voted yes. Most of the people I have talked to look brightly at the future for Poland, and so far they have been right, the economical growth is a fact, but is it thanks to the Poles or mostly a result of the increasing interest from foreign investors?

14.1 Polish investors in Poland vs. foreign ones

The low salary rate in Poland speaks for itself, with a minimum salary set to 650 PLN (around 180 Euro) in 2005. In 2006 this was raised to almost 900 PLN (around 250 Euro) but still, it is overwhelmingly low compared to the rest of Europe. The minimum salary is regulated by law but this does not stop many employers from getting around it by for example only hiring young people that just passed their examination and therefore can be paid 80% of the minimum salary the first year of employment and 90% the second year. In Poland there are a lot of poor people but also a lot of people with comparatively very high salaries. The average salary was in the second quarter of 2005 almost 2320 PLN (around 600 Euro) which shows that there is a big gap between the people with the lowest salary and those with the highest. The goal is to step by step rise the minimum salary every year until it reaches at least 50% of the average salary. But will this be enough for the average Pole to meet the competition from foreign people on the real estate market? The prices keep rising, and this rise is going much faster than the rising of the Polish salaries. Poland's economical situation will continue to get better but it could end up being run by the foreign investors and the rich "Polish elite" not leaving much room for the average Pole.

14.2 The markets change from a historical point of view

Up until 1989 Poland was under Communistic regime. During over half a century there was no real estate market, or at least there was no free market. Land ownership was connected with power, and considering that times ideology, power was something negative that would give individuals advantages. Therefore nobody should have it. The government was doing everything in its power to make the sales and purchases of real estate as difficult, close to impossible, as they could. The state had a "prawo pierwokupu" which is a right to be the first one to buy a real estate. For example someone wanted to sell his or her real estate and found a buyer that was willing to pay quite a lot, but then the state shows interest in the real estate, gives a much lower offer, and the seller is obliged to let the state purchase it. The result of this and many other things the government did in order to be in control of the real estate market, was that people started to conduct private, unofficial sales, which did not get registered in the land register system. For many years real estate owners changed, but the inscriptions in the land register system stayed the same in the end making it impossible to actually find the real owner when needed. This is one of the historical reasons why there today are real estates that are not inscribed in the land register.

14.3 Why invest in Poland?

The social and political situation in Poland has changed tremendously during the last ten years. Poland has gone from being a country under a Communistic regime to a modern country located in the heart of Europe. Market size and a relatively cheap labour force is one of the most important reasons why foreign investors decide to locate their business in Poland. With its population of almost 40 million, Poland is the largest market in Central Europe and the eighth largest on the continent. Poland's population constitutes a market larger than the combined markets of all the other nine countries (Hungary, Slovenia, Slovakia, Malta, Latvia, Lithuania, Estonia, Czech Republic and Cyprus) that entered the EU together with Poland in May 2004.

14.4 What's attracting foreign investors?

- Continuing, stable and fast economic growth
- The size of the Polish market of over 38 million inhabitants
- Poland's EU membership as from the 1st of May 2004
- A relatively cheap labour force
- Poland's location "in the heart of Europe", making possible easy and fast transport to both other EU countries as well as the Eastern market
- The support of and positive reviews from international institutions such as the IMF, International Monetary Fund and the World Bank

14.5 Speculation on what would happen after the entering in the European Union

Before Poland entered the European Union there were many speculations on how this would affect the Polish market, not least the real estate market. One big change was that VAT, the tax on all goods and services, was changed from 7% to 22% on construction materials. Consequently at the end of 2003 and the beginning of 2004, the sale and purchase of real estate, mostly apartments, and construction materials rose remarkably.

Another factor influencing the increase of real estate trade was the fear that the Polish real estate market would follow in Spain's footsteps with a huge rise of real estate prices after its entry into the EU.

14.6 What has changed since the 1st of May 2004

As a condition for Poland's entering to the European Union there had to be many changes and adaptations made in the Polish law system. As from the 1st of May 2004 Poland could no longer think of itself as a separate unit but more as a part of something bigger, and therefore also had to adapt its laws to fit the new situation.

The reason for these changes can be seen as quite similar to the reasons why Poland decided to keep this Act, after entering to the EU, in the first place. Of course the government wants to have an overview, control and influence on what is going on in the country, especially in the case of real estate. Real estate is a fundamental part of a country's ability to expand in the area of commerce. The first sentence in Article 1, paragraph 1, PurReEstFor says that the purchase of real estate by foreigners requires a permit. Why should such a permit be required at all?

Why is Poland still retaining this Act?

The reasons seem to be mostly political, and could be:

- The prices of land in Poland are today comparatively low, which could lead to Polish land being sold off to foreign investors/individuals
- Historical reasons: fears that most purchasers of land would be Germans
- The general increase of real estate prices would make such purchases impossible for ordinary Poles

The question is, have the general changes and amendments been for the better for Poland, not as a part of something bigger, but as a separate unit? One thing that for sure has gotten better is that the proceedings of getting a permit to buy a real estate have been changed to become quicker and simpler. The Minister of Internal Affairs and Administration has now gotten clear criteria as to how he/she should assess the incoming requests for a permit and what requirements the foreigner should fulfil to get one. The minister must also from now on examine the incoming applications within two months from their arrival. Furthermore the validity of the permit is now prolonged to two years, giving the foreigner a longer time to realize a purchase. Another big step towards modernising the Polish system is that the land register system, the so called "ksiega wieczysta", is now going through a major change to, from being a fully handwritten system, now becoming an electronic one. This is a continuous work that is estimated to be finished around the year 2013.

14.6.1 Is change always for the better?

As from the 1st of May 2004 the Polish real estate market is now opened for a much bigger audience making it difficult for Poland to monitor the purchases and get the same overview as before. The Polish government, although its strong will to be a part of the European community, still wants to keep Poland "as Polish" as possible. Poland wants to prosper in all fields but wants to have itself to thank for it, not necessarily the foreigners that consequently by buying real estates and opening up businesses, step by step could become more powerful in the country. Contradictory, the Polish government wants to be a part of the European Union, wants to play a bigger role in the world, but at the same time, does not want foreigners to get too big of an influence within the country. On the other hand when speaking about the individuals of Poland, the people making a living on the real estate trade, they are of another opinion. Anything that can get the prices up and the profits rising is good. It is good for them and good for the country. However, from a more political point of view this is not always the opinion of the leaders of the country.

14.7 Regulations connected with real estate purchases in Poland

Depending on what kind of real estate you want to buy, you need to look at different regulations. If you want to buy an independent living premises, i.e. an apartment, it is quite simple. In that case you need to contact a realtor, find an appropriate apartment, have the money or a granted loan, sign the papers, send them to a notary and get the purchase inscribed in the "księga wieczysta" making you the official owner. When it comes to the purchase of agricultural real estate or forest there are however some conditions that differ depending on who you are. If the purchaser is from an EEA country he/she will need to get a permit in order to make a purchase until the 1st of May 2016, after which he/she no longer needs a permit. This is how long the so called transitional period applies. The purchase will however after this date be regulated in other ways. For example you can not as a foreigner buy a real estate in the vicinity of Poland without a permit nor can you buy a real estate meant to be used for agrarian purposes that exceeds a total area of 1 ha. In these cases you always need to obtain a permit. Why are the sales of agrarian real estate and forests regulated and protected in this way? The answer, or one of them, to this question could apply to many other countries than Poland, and it is the country's will to monitor the purchases within the country, having a general overview and to some extent being in control of them.

15. Conclusion

In writing this report the conclusions reached are:

- On the 24th of February 2004 an amendment to the act about the purchase of real estates by foreigners from 1920 came into force. This act was needed in order to meet the requirements from the European Union that Poland should adapt its national laws to the regulations of the union
- On the 1st of May 2004 Poland entered the European Union
- When buying a real estate in Poland a foreigner needs to obtain a permit
- To get a permit the foreigner needs to show circumstances that link him/her to the Republic of Poland. The applications are made to the Minister of Internal Affairs and Administration
- A foreigners purchase of real estate must not threaten the country's national security, public safety or public order or contravene the country's politics and public welfare
- The purchase of an apartment does not require a permit
- EEA-members do not need a permit except when buying a second home or agricultural and forest land which are connected with special regulations
- When conducting a business in Poland this is regulated in the economic freedom act. All EEA-members can conduct and run business in Poland on the same grounds as Polish citizens
- Poland has three forms of legal rights concerning the holding or property and these are the ownership right, perpetual usufruct right and the contractual property right (lease) which is divided into two categories, namely najem and dzierżawa
- There are several cost and taxes connected with the real estate trade in Poland and the three taxes are the real estate tax, perpetual usufruct tax and agricultural tax. The costs are among others permit fees, court registration fees, notary fees and agent fees.
- All real estate purchases must be registered in the Polish land register system, the księga wieczysta

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