
ACQUISITION OF PREMISES AS REAL PROPERTY BY FOREIGNERS DURING THE YEARS 2004–2008

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Key words: foreigners, acquisition of real property by foreigners, premises.

A b s t r a c t

The paper presents the principles of acquisition of real property by foreigners that are different for the citizens of the European Economic Area countries and the other countries. The fragment of the real property market in Poland encompassing transactions in premises that involved foreigners was covered. In the base of the studies conducted for the years 2004–2008 it was established that the interest of foreigners in acquisition of premises in Poland increases.

NABYWANIE NIERUCHOMOŚCI LOKALOWYCH PRZEZ CUDZOZIEMCÓW W LATACH 2004–2008

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Słowa kluczowe: cudzoziemcy, nabywanie nieruchomości przez cudzoziemców, nieruchomości lokalowe.

A b s t r a k t

W artykule przedstawiono zasady nabywania nieruchomości przez cudzoziemców, które są różne dla obywateli krajów należących do Europejskiego Obszaru Gospodarczego i pozostałych krajów. Przedstawiono fragment rynku nieruchomości w Polsce dotyczący transakcji nieruchomościami lokalowymi z udziałem cudzoziemców. Na podstawie przeprowadzonych badań w latach 2004–2008 stwierdzono, że wzrasta zainteresowanie cudzoziemców nabywaniem lokali w Polsce.

Introduction

Following Poland's accession to the European Union, the real property market represented one of the areas covered by legal regulations' adjustments. The effects of those adjustments included, among others, the amendment of the Act of the 24th of March 1920 on acquisition of real property by foreigners that governs the participation of foreign entities in the Polish real property market. According to the general principle contained in article 1 section 1 of the Act, acquisition of real property by a foreigner requires a permit that is issued by the Minister of Interior and Administration (MIA) unless an objection is lodged by the Minister of National Defense or, in case of the agricultural real property, the Minister competent for the issues of agriculture and rural development. The MIA permit is also required for purchase or acquisition by a foreigner of stocks or shares in a commercial company with the registered domicile in the Republic of Poland, which is an owner or holder of perpetual usufruct rights to a real property. The requirement of obtaining the permit is related to protection and security of the fundamental political and economic interests of the State (OSIECKA 2007). The Act amended in 2004 differentiates the principles of real property acquisition by foreigners between the entities originating from the European Economic Area (EEA) and the other countries. It also introduces time (transition periods) and subject (real properties situated in the border zone, acquisition of the so-called second home) limitations.

Goal and methodology of studies

The paper aims at presenting the scale of trade in premises acquired by foreigners (individuals and legal entities) during the years 2004–2008.

The scope of the studies covered transactions in premises registered with the MIA, for which the permit was required as well as those purchased without the permit.

The following were the sources of data for the study:

- legal regulations governing the process of acquisition of premises by foreigners,
- MIA reports from performance of the Act of the 24th of March 1920 on acquisition of real property by foreigners during the years 2004–2008.

The vertical and horizontal analyses were applied to characterize and assess the market. The dynamics of changes in acquisition of real properties area during the years 2004–2008 was investigated by applying the variable base index. Indicators of structure of the acquired land property and premises

acquired by foreign legal entities and individuals were computed as concerns the number and area of real property purchased. Also the voivodships and towns in which the largest numbers of transactions with participation of foreigners were conducted were identified.

Principles of acquisition of premises by foreigners

As of the 1st of May 2004, the MIA permit is not required for acquisition of real property by foreigners who are citizens of or entrepreneurs from the member states of the European Economic Area with the exception of acquisition of agricultural and forest real properties that are excluded from that principle for the period of 12 years as of Poland's accession to the European Union, that is until the 1st of May 2016. According to art. 8 of the Act on acquisition of real property by foreigners exclusion of agricultural and forest real property from unrestricted acquisition by citizens and entrepreneurs from the EEA does not apply to acquisition of stocks and shares in companies that are owners or perpetual users of such real properties. As of the 1st of May 2009 the limitations concerning acquisition of the so-called second home also ceased to exist. Acquisition of premises – independent residential or commercial premises as defined in the Act of the 24th of June 1994 on ownership of premises by foreigners who are citizens of the European Economic Area takes place without the requirement of obtaining the MIA permit.

More restrictive regulations apply to acquisition of real property by foreigners who are not citizens or entrepreneurs from member states of the EEA. According to art. 8 of the Act on acquisition of real property by foreigners the MIA permit is not required for acquisition of independent residential premises (as defined in the Act on ownership of premises) and independent commercial premises with the intended use as a garage or a share in such premises, if that results in satisfying the housing needs of the buyer. That regulation, however, is not applicable to acquisition of such premises in the border area (the belt ca. 15–20 km in width from the border) for acquisition of which the permit is required. The MIA permit is also required for acquisition of commercial premises of service character, i.e. with the intended use for purposes other than a garage acquired for the purpose of satisfying the housing needs of the buyer or real property or independent residential premises owner (SKOCZYLAS 2004).

All transactions in premises involving foreigners, both those requiring and those not requiring obtaining the permit are subject to registration with the MIA. The provisions of the Act on acquisition of real property by foreigners do not apply, however, to acquisition of the cooperative ownership rights to

residential premises as a limited material right. Despite the fact that it is a hereditary, transferable and disposable right that may be subject to trading such transactions are not subject to registration with the MIA.

The share of foreigners in the Polish market of premises

In Poland, during the years 2004–2008, an increased interest of foreigners in both land and premises as real property was recorded (Fig. 1). The number of premises acquired by foreigners (on the base of the permit obtained and without the requirement of obtaining the permit) during the years 2004–2008 increased systematically from 1232 transactions in premises in 2004, 1676 transactions in 2005 (increase by 36% as compared to 2004), 2504 in 2006 (increase by 67% as compared to 2005), 3568 in 2007 (increase by 42% as compared to 2006), and 4410 transactions in 2008 (increase by 24% as compared to 2007).

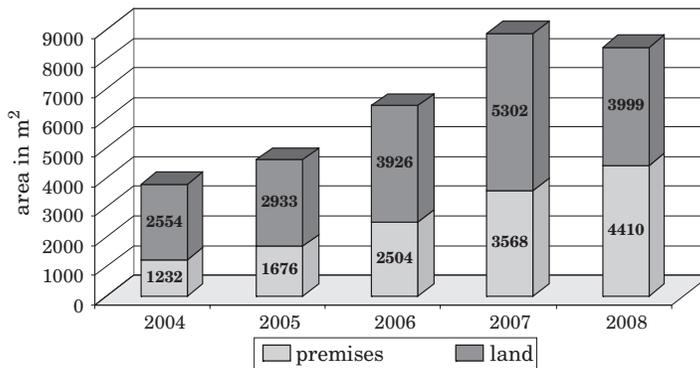


Fig. 1. The number of real properties acquired by foreigners during the years 2004–2008
Source: Own work based on the MIA reports.

The increasing numbers of transactions in premises involving foreigners is reflected in the share of such transactions in the entire market of real property acquired by foreigners. The number of premises acquired in 2004 represented 32% of the total number of real properties acquired by foreigners and in the following years that share was: 36, 39, 40 and 52% respectively. In 2008, the number of transactions in premises exceeded the number of transactions in land involving foreigners.

The area of premises acquired by foreigners during the years 2004–2008 does not show a definite trend and does not reflect the increasing numbers of the premises acquired (Fig. 2). The interest of foreigners in acquisition of premises during the years 2004–2005 immediately after Poland's accession to the European Union and liberalization of regulations applicable to acquisition of real property by foreigners was lower than in the following years. That trend changed as of 2006 when the foreigners acquired the largest area of premises during the entire period covered by the study – 663 594 m², which was an increase by 285% as compared to 2005 when 172 118 m² of premises was acquired. That might result from the general economic boom and the boom in the real property market coupled with the increased activity in the field of developer activities observed during those years.

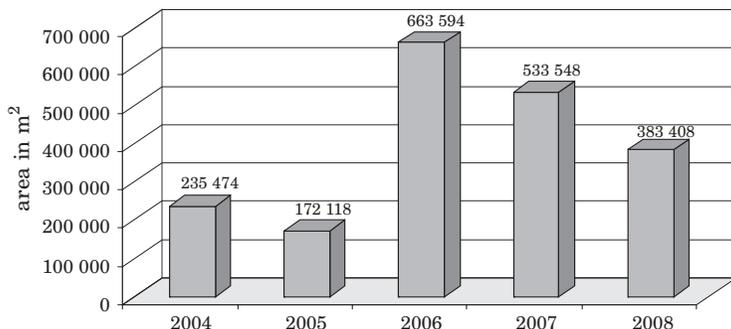


Fig. 2. Area of premises acquired by foreigners during the years 2004–2008
Source: Own work based on the MIA reports.

A change occurred as concerns the average area of premises acquired by foreigners. In 2004 it was 191 m², in 2005 – 103 m², in 2006 – 265 m², in 2007 – 149 m², and in 2008 – 87 m². As indicated by the data presented, foreigners search for premises that had large area – non-standard in case of residential premises as well as commercial property for operation of their business (halls, warehouses). As a consequence of the fact that no data differentiating between the number of residential and commercial premises acquired it is hard to draw any conclusions concerning the average area of the residential and the commercial premises acquired.

As concerns the area of premises acquired the division into the area of residential and commercial premises acquired is interesting (Fig. 3). In 2004, foreigners acquired 75 915 m² of residential area that represented 32% of the total area of premises acquired. During the following years that share was 84 787 m² and 49% in 2005, 133 965 m² and 20% in 2006, 185 473 m² and 34%

in 2007, and 224 879 m² and 59% in 2008. The fluctuating percentage share has no influence on the systematic increase in area of the residential premises acquired. The largest increase over the preceding year was recorded in 2006 when foreigners acquired 58% residential premises area more than in 2005. In the following year (2007) the increase was 38%. This may indicate interest in acquisition of residential premises for recreational purposes as well as acquisition for capital investment purposes.

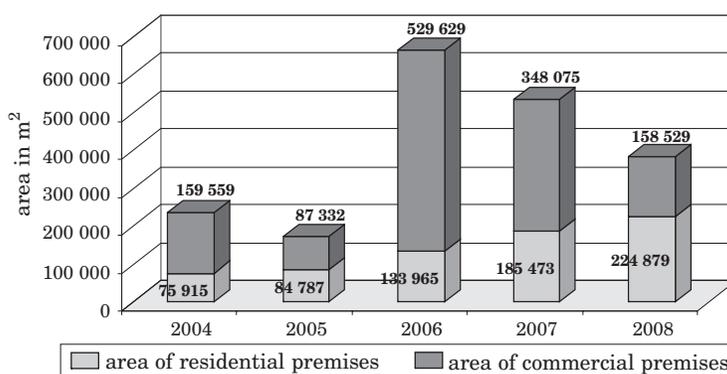


Fig. 3. Area of residential and commercial premises acquired by foreigners during the years 2004–2008

Source: Own work based on the MIA reports.

The foreign buyers of premises during the years 2004–2008 were individuals and legal entities (Fig. 4). The share of individuals in the market of premises during those years was diversified. It was the highest in 2008 at 62% and the lowest in 2006 at 23% (in 2004 – 27%, in 2005 – 58%, in 2007 – 39%). There is also a difference in the intended use of premises acquired by individuals and the legal entities. Individuals acquired mainly residential premises while the legal entities acquired mainly the commercial premises. The data for 2006 indicate that individuals acquired 150 668 m² of premises of which 121 883 m² (81%) was residential area. The area of commercial premises was 28 785 m² (19%). Legal entities acquired 512 925 m² of premises of which commercial premises were 98% (500 844 m²) while residential 2% (12 081 m²). During the years 2007–2008 the situation was similar as 70–80% of area acquired by individuals represented the area of residential premises while around 90% of the area acquired by legal entities were commercial premises.

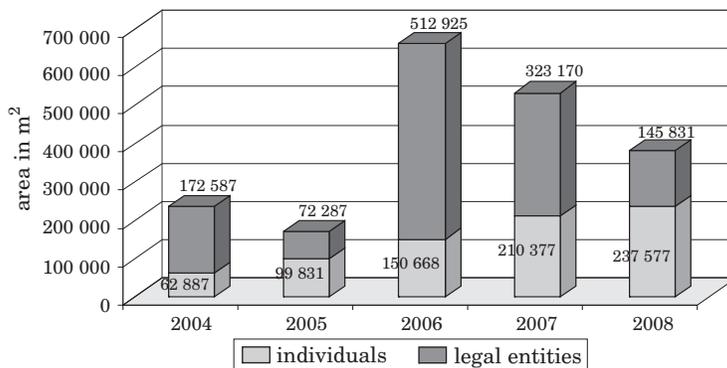


Fig. 4. Share of foreign individuals and legal entities in the Polish market of premises during the years 2004–2008

Source: Own work based on the MIA reports.

The MIA gives the number and area of premises acquired by foreigners by the voivodship of Poland. During the years 2004–2008, from 20,5% (in 2004) to 50% (in 2006) of all premises acquired in Poland by foreigners was acquired in Mazowieckie voivodship. The voivodships that followed (different during individual years) were Pomeranian, Silesian, Łódzkie, Lower Silesian, Małopolskie and Western Pomeranian. Just marginal interest among foreigners is observed as concerns premises situated in the eastern voivodships of Poland. The transactions in premises take place mainly in the largest cities of Poland. During the years 2006–2007 around 50% of transactions were closed in Warsaw, 20% in Kraków, 7% in the Tricity while the remaining premises were acquired in Poznań, Wrocław, Świnoujście, Szczecin and Łódź.

Cooperative premises that do not represent a separate subject of ownership as defined in the Act on ownership of premises represent one of few real property market segments in which foreigners participate that is entirely uncontrolled. The cooperative ownership right to premises is disposable and hereditary while at the same time it is a limited material right but transactions in such rights are not subject to registration with the MIA. Leaving aside the other economic and social issues, as a consequence of a significant share of cooperative premises (ca. 30% of residential premises in Poland remains within the resources of housing cooperatives) there is need for continuation of the process of establishing separate ownership of those premises.

Conclusion

In Poland there is control and partial regulation of the trade in real properties with participation of foreigners. This assures security and protection of the interest of the State and the citizens. It is also a consequence of the position represented by the Polish public and relates to the fear that Polish land would be bought out by foreigners (ŁAGUNA 2004). The control and regulation of trade in real property with participation of foreigners is governed by the provisions of one of the fundamental and oldest legal acts, the Act on acquisition of real property by foreigners. It contains the legal regulations of the civil law that governs acquisition of real property as well as the administrative law that applies to issuance of permits that are the condition for such acquisition.

On the base of the conducted studies it can be concluded that the interest of foreigners in acquisition of premises in Poland increases systematically. But in its nature it was not a “massive buyout” which a part of the Polish society was afraid before Poland’s accession to the European Union. A reverse phenomenon was observed. The largest volume of premises was acquired by foreigners during the years 2006–2007, and not directly following the liberalization of acquisition regulations, i.e. during the years 2004–2005. The locations that were the most attractive for foreigners were Mazowieckie, Silesia and Pomerania. A significantly lower numbers of recorded transactions occurred in the eastern Poland. The lower level of economic development and a different structure of supply characterized by domination of agricultural and forest real properties might be the reason for that situation. The majority of transactions took place in the largest cities of Poland, in most cases those that are 77capitals of voivodships (Reports by the MIA 2004–2008).

Translated by JERZY GOZDEK

Accepted for print 7.10.2009

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