

Restrictions on trading in agricultural property in Poland

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Definition of agricultural property

The Agricultural System Act introduces a number of restrictions and obligations related to trading in agricultural property in Poland. Thus it is vital to define precisely what agricultural property is. Incorrect classification of property may render the transaction defective. Below we discuss the definition of agricultural property in light of the Agricultural System Act.

The general definition of real estate is a part of the earth's surface constituting a separate object of ownership (i.e. land), as well as structures permanently attached to the land or parts of such structures, if under special provisions they constitute the subject of ownership separate from the land.

In turn, Art. 461 of the Polish Civil Code defines agricultural property as property “that is or can be used to conduct productive activity in agriculture involving vegetable or animal production, not excluding garden, orchard or fish production.” Notably, the code definition of agricultural property refers to **the possibility of using the property for agricultural purposes**, not the current use of the property.

The Agricultural System Act specifies that “agricultural property” is agricultural property within the meaning of the Civil Code, but excluding real estate in areas designated in zoning plans for purposes other than agricultural. Moreover, for the Agricultural System Act to apply to a given agricultural property, its agricultural area must amount to at least 0.3 hectare. The act also introduces additional thresholds for the area of agricultural property, beyond which particular provisions of the act apply. For example, in principle only an individual farmer can purchase an agricultural property without the approval of the National Support Centre for Agriculture (KOWR). This rule will not apply if the area of the agricultural property is less than 1 hectare. Therefore, to determine whether the Agricultural System Act applies to a particular property, it is necessary to verify not only whether it has the status of agricultural property, but also what its area is.

Potential concerns

This legal framework raises a number of questions and interpretative doubts. In practice, the following basic issues in particular may require clarification:

- How should the concept of the property be understood? How to determine the area of an agricultural property?

- How to determine the designated use of a property to which the local zoning plan does not apply?
- If only part of a property is agricultural land, is it an agricultural property?

We will try to resolve these doubts in this article, based on the legal practice and the rulings from the courts.

How should the concept of the property be understood? How to determine the area of an agricultural property?

In practice, we may encounter a situation where two bordering properties, described in two separate land and mortgage registers, are sold at the same time. Should they be considered two separate properties, and should the restrictions of the Agricultural System Act be applied separately to each of them, because they are covered by two different land and mortgage registers? Or do they effectively constitute a single property?

Neither the regulations nor the decisions from the courts provide clear answers. Each situation should be analysed on a case-by-case basis, taking into account a number of circumstances, including ownership issues and how the property is used. As a precaution, it is better to assume that if the combined area of the two properties causes the restrictions of the Agricultural System Act to apply, they should be considered a single property. This understanding of the concept of real estate is confirmed by a line of case law emphasising the criterion of ownership and the location of the property. For example, in its order of 17 November 2003 (case no. V CK 396/02), the Supreme Court held that “the concept of property in the legal *in rem* sense depends neither on the existence nor the number of land registers, but only on the identity of the subject of ownership.”

On the other hand, when a single land register covers a number of parcels of land that do not border each other, one should consider applying the most prudent interpretation in such a situation, i.e. the opposite interpretation of the concept of real estate stressing the criterion of the property being identified in a single land register. This interpretation is also supported by rulings from the Supreme Court of Poland. For example, in the judgment of 22 February 2012 (case no. IV CSK 278/11), the court held: “Bordering plots of land, owned by the same person, for which separate land and mortgage registers are kept, constitute two separate properties within the meaning of Art. 46 §1 of the Civil Code. This separateness is lost if they are merged into one land and mortgage register, as the ‘one register—one property’ rule applies.”

Determination of the status of property not in the area covered by a local zoning plan

In light of the Agricultural System Act, to assess the nature of the property, it is first necessary to determine whether the property is fully covered by a local zoning plan. If the local zoning plan covers the entire area of the property and provides for its use for purposes other than agriculture, then the property does not constitute agricultural property. In such a case, it should be considered that the property will not constitute agricultural property even if it is physically possible to carry out agricultural activities there.

If the area where the property is located does not have a local zoning plan, or the local zoning plan does not cover the entire area of the property, the nature of the property should be determined on the basis of the Civil Code. The case law and transactional practice indicate that the wording of the entry in the land registry will be relevant to this assessment. As Supreme Administrative Court stated in its judgment of 12 March 2020 (case no. II OSK 1279/18): “The entries in the land registry as to the agricultural nature of the property determine the possibility of using it for agricultural production activity in crop and livestock production and determine its nature.”

If only part of a property is agricultural land, does the property constitute agricultural property?

Taking into account the foregoing comments relating to the local zoning plan, if the land registry indicates that the area of the property includes at least 0.3 hectare of agricultural land, it should be assumed that the entire property is agricultural within the meaning of the Agricultural System Act, and the restrictions therein apply to it. It does not matter, for example, that the rest of the property, with a much larger area, is used for purposes other than agriculture.

If certain land is not and cannot be used for agricultural purposes, but due to its history it is described in the land register as agricultural land, for precautionary reasons we recommend regarding the land as agricultural property until the historical entry in the land register is corrected. This position is confirmed by the courts. For example, as the Province Administrative Court in Warsaw held: “The official confirmation of whether a given area meets the requirements of agricultural land or forest land is the relevant entry in the land and buildings register. This evidence cannot be independently challenged by administrative bodies, or by a court, by classifying a given piece of land

as agricultural property based solely on the statutory definition in the Civil Code and ignoring the entry in the record.” As a result, if a property cannot be used for agricultural purposes, but is described as agricultural land in the land register, from a practical perspective it is reasonable to amend the land registry before disposing of the land. Otherwise, there is a risk that the transaction will be deemed inconsistent with the Agricultural System Act.

The definition of agricultural property in the Civil Code, effectively referring to any property where agriculture can be carried out, may raise concerns that this definition might even apply to scraps of land created through subdivisions or other property of unusual shape, where it is hard to imagine that agriculture could be effectively carried out. These doubts are allayed by rulings from the Supreme Court case recognising that in assessing the status of property, it should be considered whether in practice it is economically feasible to conduct agricultural activity on the site.

For example, in the order of 30 September 2022 (case no. I CSK 2598/22), the Supreme Court stated that “negligible amounts of produce to meet the needs or personal tastes of the landholder cannot be considered productive agricultural activity.” And the Supreme Administrative Court held that, for similar reasons, transit routes do not constitute agricultural property: “Transit routes as such are not and cannot be used for agricultural production, and therefore do not constitute agricultural property within the meaning of Art. 461 of the Civil Code. Roads are used for connections, not directly for agricultural production, and are not used for conducting crop or animal production” (judgment of 10 August 2021, case no. I OSK 498/21).

The Agricultural System Act also contains a catalogue of exemptions, including categories of property to which the act does not apply. One exclusion is for “internal roads.”

Due to these basic legal conditions, to limit legal risks, before disposing of a property it is necessary to verify its status and determine whether it meets the conditions to be regarded as agricultural property.

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Proceedings before the National Support Centre for Agriculture: Obtaining approval for acquisition of agricultural property

The procedure for obtaining approval for acquisition of agricultural property is highly formalised. Not every entity is eligible to acquire agricultural property. For example, this cannot be done by a commercial company interested in starting agricultural activity. Additionally, strict requirements have been enacted governing the price at which the vendor can offer agricultural property for sale.

In Poland, trading in agricultural property is subject to strict administrative and legal rationing. It should be noted that the Agricultural System Act does not apply to an agricultural property with an agricultural area of less than 0.3 hectare. We examine in detail what is meant by agricultural property in the article “Definition of agricultural property.”

The Agricultural System Act provides that individual farmers and entities specified in Art. 2a(3) of the act may acquire agricultural property without obtaining approval from the National Support Centre for Agriculture (KOWR)—for example, family members of the seller, purchasers in the course of bankruptcy or restructuring proceedings, or when the property is acquired as a result of conversion of an individual business or partnership into a company. Additionally, the area of the agricultural property to be acquired, along with the area of agricultural property included in the purchaser’s family farm, must not exceed 300 hectares of agricultural land (subject to other exceptions in Art. 2a(3) of the act). And it is worth noting that currently it is not necessary to obtain approval from KOWR for acquisition of agricultural property if the area of the agricultural property being acquired is less than one hectare.

Apart from the exemptions stated in the Agricultural System Act, acquisition of agricultural property in Poland requires the formal approval of the director general of the National Support Centre for Agriculture, which is issued after meeting the conditions described below. The parties to the administrative proceedings seeking consent to acquire such property are the seller and the buyer.

A request for consent may be submitted:

1 By the **seller of agricultural property** if:

- The seller demonstrates that there was no possibility to sell the agricultural property to an individual farmer

- The purchaser will undertake to carry out agricultural activity on the agricultural property after acquiring it
- The acquisition will not result in excessive concentration of agricultural land (i.e. holding more than 300 hectares), and
- The sale price is not less than 95% of the price stated in the notice of intent to sell the agricultural property.

The prospective seller of the agricultural property must post an announcement of the intended sale in the ICT system maintained by KOWR, including:

- Identification of the agricultural property being sold with data from the land and building register and the number of the land and mortgage register
- A description of structures and other assets included in the property
- Information on the designated use of the property in the local zoning plan, or if there is none, information on the siting of a public-purpose project established in the final siting decision
- Information on land use and development conditions
- The price of the agricultural property being sold
- The deadline for responses to the announcement, which may no earlier than 30 days after posting of the announcement in the ICT system.

The condition of demonstrating that there was no possibility of selling the agricultural property to an individual farmer is considered fulfilled if no individual farmer submitted a response to the announcement and the price of the property stated in the announcement is **no more than 50% greater** than the average sale price for arable land per hectare in private transactions in the given province, as reported by Statistics Poland for the quarter preceding the date of publication of the announcement, unless the seller presents an appraisal showing that the value of the agricultural property exceeds that threshold, or the circumstances indicate that a potential acquirer responding to the announcement is no longer interested in acquiring the agricultural property.

A response to an agricultural property announcement is also deemed not to have been submitted if the price proposed in the response was more than 5% lower than that stated in the announcement, or the response was submitted after the stated deadline.

2 By a **natural person intending to establish a family farm** who:

- Holds agricultural qualifications
- Undertakes to carry out agricultural activities on the property, and

- Undertakes to reside for a period of five years following the acquisition date in a commune in which one of the agricultural properties that will become part of the family farm to be created is located.
- 3 By a **natural person intending to enlarge a family farm** if:
- He or she was granted financial assistance from EU funds
 - Acquisition of the property will comply with the terms of such financial assistance
 - He or she undertakes to conduct agricultural activity on the property and reside for a period of five years following the acquisition date in a commune in which one of the agricultural properties that are part of the family farm owned by the applicant is located, and
 - The acquisition will not result in excessive concentration of agricultural land.
- 4 By a **university** if the agricultural property is necessary for its instructional purposes, or research or development work, and will be used for agricultural purposes.
- 5 By a **purchaser of agricultural property** if:
- The agricultural property is located in the area of distribution of public-purpose projects, in furtherance of public purposes
 - The purchaser undertakes to begin implementation of the project within 12 months after the date of acquisition of the agricultural property, and
 - The purchaser sets a deadline for completion of the project.

The act does not specify the exact form of an application for consent to acquire agricultural property, but provides that the application must meet the formal requirements set forth in the Administrative Procedure Code, as well as identifying the seller and the buyer, the property as listed in the land and buildings register, and the justification for the application, including the purpose for which the agricultural property is being acquired and the intended method of use.

The application must be accompanied by a number of documents, including:

- An extract from the land and building register for the parcels included in the property
- A copy of the land and mortgage register or a certificate issued on the basis of the set of documents maintained for the property, or the number of the land and mortgage register available in the central database
- A certificate on the designated use of the property in the local zoning plan
- Documents confirming that the conditions for approval are met

- The seller's statement of its intention to sell the property to the applicant
- A statement by the seller on the inability to find an individual farmer to purchase the agricultural property, and the sale price agreed with the purchaser.

The application should be submitted to the local field office of KOWR, based on the location of the property.

The Administrative Procedure Code applies to these proceedings, so the case should be resolved promptly, but within one month, or in particularly complicated cases within two months, from the date of initiation of the proceedings.

If approval is granted, the approval is valid for one year after the decision becomes legally final. Additionally, the National Support Centre for Agriculture will refuse to issue approval to acquire the property if the application is submitted more than six months after the deadline for responding to the seller's announcement of its intention to sell the agricultural property.

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Obligations of the purchaser of agricultural property

The current provisions have greatly restricted the possibility of trading in agricultural property, introducing a number of requirements that must be met before acquiring such property. But it doesn't end there. The Agricultural System Act imposes a number of obligations on the owner following the acquisition.

Running a farm

In principle, the purchaser of an agricultural property may not use the property for purposes other than running a farm. The Agricultural System Act requires the purchaser of an agricultural property to run the farm that was included in the property **for a minimum of five years** following the date of acquisition (before the 2019 amendment to the act, it was a minimum of 10 years).

This obligation applies to any purchaser of agricultural property, although in the case of natural persons the act adds that the farm should be run personally, which means working on the farm or, at the very least, making all decisions on the agricultural operations there (Art. 6(2)(1)). We should add that running a farm includes plant or animal production, including horticultural, orchard and fish production.

A natural person who acquired an agricultural property after obtaining approval from the director general of the National Support Centre for Agriculture (KOWR) is also required to reside for a period of five years following the date of acquisition of the property in one of the communes where the agricultural properties making up the family farm are located.

The act refers to the concept of an agricultural holding introduced by the Civil Code (agricultural land together with forest land, buildings or parts thereof, equipment and livestock, if they constitute or may constitute an organised economic unit, and rights related to operation of the agricultural holding), but also introduces a territorial rule. Thus the obligation to run a farm arises only if, as a result of the acquisition of agricultural property, the area of agricultural property becoming part of the farm amounts to **at least one hectare** (regardless of the nature of the title to the property). The act will not apply to farms that include agricultural properties with a total area below one hectare.

Therefore, within five years after acquiring an agricultural property, it is impossible to change its use. An exception is entry into force of a local zoning plan designating the property for non-agricultural purposes, which will effectively terminate the statutory obligation (Art. 2(4)(9)).

Doubts may arise when a purchaser who obtains approval from KOWR to acquire agricultural property does not have a farm at the time of acquisition, but acquires an agricultural property of more than one hectare. Thus, pursuant to the literal wording of Art. 2b(1) of the Agricultural System Act, this obligation should not apply (as the act does not mandate establishment of a farm, and the property being purchased does not even have to allow for the possibility of establishing a farm there per se) (although commentator Tomasz Czech takes a different view in *Agricultural System Act: Commentary* (3rd ed., Warsaw 2024), Art. 2(b)).

On the other hand, Art. 9u(3)(1) of the act provides that the sanction for violation of the obligation to run a farm will be applied when the purchaser of agricultural property **has not taken up operation of a farm** or has ceased to operate the farm that included the acquired agricultural property.

Ban on turning over the property to third parties

The act prohibits the purchaser of agricultural property from handing over such property for possession or disposal to a third party within the aforementioned five-year period after acquisition. For example, the agricultural property cannot be leased, sold or donated to a third party, except with the prior approval of the director general of KOWR.

Obtaining approval for such a transaction, in the form of an administrative decision, requires that the application be justified by important interests of the purchaser or the public. The act indicates as an important interest of the purchaser, for example, that the seller's health makes it difficult or impossible for the seller to operate a farm, as well as the seller's intention to cease farming activity. If approval for the transaction is granted, the approval is valid for one year from the date when the decision becomes legally final.

The ban on disposing of or delivering possession of the property is not absolute, and there are a number of notable exceptions, e.g.:

- Possession of the property can be delivered to, among others, a family member, a local government unit, or the State Treasury
- Disposal of the property in the course of enforcement proceedings
- Disposal or transfer of possession of property with an area of less than one hectare, located within the administrative boundaries of a city
- Disposal or transfer of possession of property as to which, after acquisition, a local zoning plan was adopted designating the property for non-agricultural uses.

The ban on disposal applies only to actions by the owner, not events beyond the owner's control, such as succession or a specific bequest. Also excluded from the ban is property acquired from a spouse during the marriage (if the property was owned by one of the spouses for at least five years prior to the acquisition or was part of their joint marital estate), as a result of division of the property after the end of the marriage (if the property was part of the divisible joint property for at least five years prior to the acquisition). The same applies to property acquired by prescription (adverse possession).

Doubts may arise when acquiring property covered by an existing lease agreement. In such a situation, the lease agreement would pass by operation of law to the purchaser of the property. In our opinion, stepping into an existing lease or tenancy agreement does not constitute an act of delivering possession of the property to a third party, so there should be no violation of the statutory ban. Nonetheless, given the strict practice of applying the act by KOWR, a

different interpretation of Art. 2b(2) of the act cannot be ruled out, and it might be concluded that in such a situation violation of the ban occurs, as long as such a lease agreement is not terminated.

Sanctions

If the purchaser does not fulfil the obligations arising from acquisition of agricultural property, for example by failing to use the property for agricultural purposes, or does not carry out the project by a certain date, KOWR may apply to the court to acquire the property for a price corresponding to its market value, taking into account the encumbrances as of the date of acquisition of the property by the purchaser (we write more about sanctions in the article “Sanctions for violations of the Agricultural System Act”).

Conclusion

The obligations discussed above under the Agricultural System Act may seem highly restrictive and potentially exert a negative impact on trading in real estate in Poland. However, these obligations do reflect a general trend across Europe to ensure rational management of agricultural land, prevent excessive fragmentation of farms, and safeguard socio-economic interests in rural areas.

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Restrictions on trading in shares under the Agricultural System Act

Before any transfer of shares in companies, it is essential to analyse the transaction in the context of the restrictions on share trading under the Agricultural System Act. If any of the subsidiaries holds an agricultural property (of at least five hectares), it may be necessary to notify the National Support Centre for Agriculture. Failure to notify the transaction will invalidate the transaction.

In Poland, restrictions are in place on both direct and indirect trading in agricultural property. In principle, acquisition of such a property (with an area of not less than one hectare) requires approval from the National Support Centre

for Agriculture (KOWR), as we discuss in the article “Proceedings before the National Support Centre for Agriculture: Obtaining approval for acquisition of agricultural property.” KOWR also has a pre-emption right or the right to purchase shares of companies that are the owner or perpetual usufructuary of agricultural property (with an area of not less than five hectares).

The criteria for evaluating transactions under the restrictions of the Agricultural System Act were tightened as of 5 October 2023. It is now necessary to examine not only whether agricultural property is held by the company whose shares are being transferred, but also by its subsidiaries.

From an investor’s perspective, this is crucial information, as in the course of legal due diligence there is a need to examine the entire capital structure of the company and analyse the legal nature of the real estate held by subsidiaries. Significantly, failure to exercise due care in this respect may result in invalidity of the transaction, and the invalidity cannot be cured. The only remedy is to repeat the entire transaction, which entails many hard-to-predict consequences, especially tax consequences. And sometimes the transaction cannot be repeated because one of the parties no longer exists.

What M&A transactions are subject to restrictions?

Primarily, the restrictions apply to:

- Contracts for transfer of shares in a company that owns agricultural property of at least five hectares
- Contracts for transfer of shares in a dominant company that owns shares in a company that is the owner of agricultural property of at least five hectares.

In addition to transfer agreements, other transactions involving shares in companies are also subject to restrictions, in particular:

- Gifts
- Swaps
- In-kind exchanges
- Increase in the share capital of a company
- Merger or demerger of a company.

Exemptions

An exception is the transfer of shares in companies whose shares are admitted to organised trading (within the meaning of the Trading in Financial Instruments Act), transfer of shares to a family member, and transfer of shares for the purpose of redemption. Currently, there are also no restrictions on the conversion of companies.

What is a “dominant company”?

At this point, it is important to clarify what exactly is a “dominant company” (aka a “parent company”). The Agricultural System Act carries over the definition from the Commercial Companies Code, according to which a company is dominant over another company when:

- It holds a majority of votes at the shareholders’ meeting or general meeting or on the management board of the subsidiary
- It has the power to appoint/remove a majority of the members of the subsidiary’s management or supervisory board
- The dominant company’s management board members constitute more than half of the members of the subsidiary’s management board, or
- It exerts decisive influence over the activities of the subsidiary, in particular as a result of an agreement between the dominant company and the subsidiary providing for management of the subsidiary or upstreaming of the subsidiary’s profits.

Thus, instead of bright-line criteria for assessing whether one company is dominant over another, the law refers to exerting decisive influence over the subsidiary, which may generate doubts in interpretation.

The law also does not specify whether only direct dominance counts, or also indirect dominance. Thus a situation cannot be ruled out where the right to acquire shares will be vested in KOWR in a case of indirect dominance, where the company whose shares are the immediate subject of the transaction (the “grandparent” company), in addition to being the parent company, directly holds shares in a subsidiary of the parent company (the “grandchild” company) that holds legal title to agricultural property. Even owning a 5% stake would suffice. Therefore, in some cases, before completing the transaction, it is necessary to examine the entire corporate structure of the company whose shares are being transferred, as well as the legal status of the properties of all the companies in the structure.

The procedure for entering into an transfer agreement or other type of transaction

For a transfer, it is necessary to conclude the transfer contract on the condition that KOWR does not exercise its pre-emptive right within two months from the date of notification.

For other transactions, in principle the transaction must first be carried out, and subsequently the right to acquire shares must be notified to KOWR.

In both cases, a number of documents must be enclosed with the notice to KOWR to be effective. The notice must be sent to KOWR immediately after conclusion of the agreement or performance of other relevant act. Otherwise, it may be deemed ineffective. The notice is made not by a company that is a party to the transaction, but by the management board of the company whose shares are the subject of the transaction. Thus it is the responsibility of that company's management board to complete the required attachments.

Do the restrictions apply to foreign parents?

The Agricultural System Act does not directly answer this question. Nevertheless, the restrictions do not seem to apply here. First of all, the act refers to the definition of a dominant company under the Polish Commercial Companies Code, pursuant to which a dominant company holding the shares may be a limited-liability company (*spółka z ograniczoną odpowiedzialnością*) or a joint-stock company (*spółka akcyjna*)—i.e. Polish corporate forms.

It is understood that the concept of a dominant company within the meaning of the Commercial Companies Code extends to foreign companies only in exceptional cases. But most often, the concept of a dominant company covers only companies established under Polish law, since the commands and prohibitions stated in the Commercial Companies Code are expressly addressed to them. Additionally, acquiring or losing the status or a shareholder, and rights and obligations pertaining to this status, are governed by the laws of the country where the legal entity is established. For these reasons, it should be recognised that the transfer of shares of companies established in another country but holding agricultural property in Poland is not subject to the restrictions of the Agricultural System Act.

The powers of the National Support Centre for Agriculture

To exercise its pre-emptive right or the right to purchase shares, KOWR may inspect the company's books and records and demand disclosure of information not included in the books and records. Additionally, KOWR may challenge the transfer price for shares set in the transfer agreement when, in its opinion, the price grossly deviates from the market value. This poses a major risk to the parties, as the price set during the parties' negotiations may be successfully challenged in court.

Conclusion

Observation of the practice shows that the National Support Centre for Agriculture extremely rarely exercises its pre-emptive right or right to purchase shares in these transactions. But the sanction for carrying out a transaction in disregard of KOWR's authority is extreme: absolute nullity of the transaction.

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Sanctions for violations of the Agricultural System Act

The primary stated purposes of the Agricultural System Act of 11 April 2003 are to strengthen family farms in Poland, ensure the country's food security, and promote sustainable agriculture with an emphasis on environmental protection. Therefore, the act imposes severe sanctions for violation of its provisions: nullity of the transaction or forced buyout of the agricultural property.

The National Support Centre for Agriculture

Under the amendment that came into force on 30 April 2016, the Agricultural System Act introduced strict rationing in the trading of agricultural property, including the trading of shares in companies, and granted broad powers to the National Support Centre for Agriculture (KOWR), an executive agency under the Minister of Agriculture and Rural Development, in particular with regard to:

- Issuing approval for acquisition of agricultural property by a person who is not an individual farmer
- Exercising the pre-emptive right or the right to acquire agricultural property or shares of companies
- Issuing approval for disposal of agricultural property or placing it in dependent possession within five years after acquisition
- The possibility of forced buyout of agricultural property for the purpose of implementing agricultural policy.

Additionally, KOWR has the authority to oversee compliance with the obligations under the act, which we write about in more detail in the article “Obligations of the purchaser of agricultural property.” KOWR may enter the agricultural properties of the entities undergoing inspection, and demand information related to the inspection, as well as presentation or access to relevant documents.

Nullity of the legal act

If KOWR discovers a violation of the Agricultural System Act, it has the right to bring legal proceedings to annul a transaction performed in violation of the act. The act does not impose a time limit on the use of this remedy.

This issue is regulated by Art. 9(1) of the act, according to which the acquisition of any of the following pursuant to a transaction contrary to the Agricultural System Act is invalid:

- Ownership of agricultural property
- A share in co-ownership of agricultural property
- The right of perpetual usufruct of agricultural property
- A share in perpetual usufruct of an agricultural property, or
- Shares in a company or dominant company within the meaning of the Commercial Companies Code.

This is an open-ended catalogue of transactions covered by the sanction of absolute nullity.

Notably, the amendment of 13 July 2023 clarified that acquisition of agricultural property on the basis of a transaction is invalid, and not, as before, also on the basis of other legal events. Regardless, the catalogue of cases in which the law is violated and which are covered by the sanction of nullity also lists the acquisition of property based on legal events and court rulings without the required notification to KOWR of its right to acquire the asset. This

means that the act is not consistent in this regard, and leaves open doubts in interpretation as to the mode by which, for example, a merger of companies without notifying KOWR should be declared invalid.

In the catalogue of cases in which, among other things, there is a sanction of invalidity, the following are listed:

- 1 Performing a legal act without notifying the holder of the pre-emptive right or without notifying KOWR.

Pursuant to Art. 3 of the act, a tenant is entitled to pre-emptive purchase of agricultural property, provided that the tenancy agreement was made in written form, with a date certain, and has been performed for at least three years, and the property is part of the tenant's family farm.

On the other hand, among other things, KOWR must be notified:

- In the event of a change of a partner or accession of a new partner to a partnership (if the partnership owns an agricultural property of at least five hectares or several agricultural properties with a total area of at least five hectares)
 - When a joint-stock company adopts a resolution to apply for admission of its shares to trading on a regulated market (if the company is the owner of an agricultural property of at least five hectares or several agricultural properties with a total area of at least five hectares)
 - When acquisition of an agricultural property occurs as a result of entering into an agreement other than a transfer agreement, a unilateral legal act or a ruling of a court or administrative authority, a judicial or enforcement authority, or any other legal act or other legal event, in particular, prescription (adverse possession), succession, or specific bequest, the subject of which is an agricultural property or an agricultural holding, or the division or merger of companies.
- 2 Disposal or transfer of possession of agricultural property without the approval of the director of KOWR within five years from the date of transfer of ownership of such property.
 - 3 Acquisition of agricultural property based on false statements, forged documents, or documents purporting to confirm false statements.

Forced buyout of agricultural property

The second type of sanction for violations of the Agricultural System Act is the forced buyout of property. Art. 9(3) of the act specifies situations in which KOWR may apply to the court for acquisition of agricultural property at a price corresponding to its market value (taking into account encumbrances as of the date of acquisition of the property by the purchaser), if the purchaser does not fulfil the obligations arising from the acquisition of agricultural property.

This provision specifies such situations in detail, listing in particular failure to take up operation of a farm, or ceasing to operate a farm (and in the case of a natural person, failure to take up, or ceasing to operate, a farm personally) which included the acquired agricultural property, within five years after acquisition of the property.

Both of these sanctions for violation of the act are severe and difficult to reverse. In the case of entering into an agreement for transfer of an agricultural property without applying KOWR's statutory pre-emptive right, the sanction of absolute nullity cannot be remedied. Alternatively, the parties could redo the transfer agreement, but this is not always possible (for example, if one of the parties to the transaction has lost its legal existence), not to mention the hard-to-predict tax consequences.

That is why it is so important to analyse the potential restrictions under the Agricultural System Act before carrying out any transaction that may be covered by the act.

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