

## Rollin' on a river (of regulations)

On 17 August 2023, a vote was held in the Sejm, during which (despite previous rejection by the Senate) the law amending, among other things, the Act of 11 April 2003 on the formation of the agricultural system ('AFOS') was pushed through. The amendment will enter into force on 5 October 2023.

Inter alia, the wording of the provision under which agricultural property of less than 0.3 ha was excluded from the application of the Act was interfered with. In previous practice, it was assumed that if even a small part of the property (even less than 0.3 ha) was agricultural and the whole property was more than 0.3 ha then the whole property was considered agricultural and the provisions of the AFOS applied to it.

The Act clarifies this issue by stipulating that the AFOS will not apply to real estate with an agricultural area of less than 0.3 ha, regardless of the size of the entire property. Thus, only the area occupied by agricultural land will be taken into account and if it is less than 0.3 ha, the property will not constitute agricultural property within the meaning of the AFOS.

This will make it easier to market properties with only a small proportion of agricultural land. Land register data will also become more important.

Another positive change relates to the provisions concerning the obligation to run a farm for 5 years after the acquisition of an agricultural property and the prohibition of being able to sell or give possession to others during that period. Until now, it was not clear whether this obligation ceases if, after the acquisition of such property, a local development plan ("LDP") is enacted or amended, changing the use to non-agricultural purposes. The practice of notaries in this regard was also inconsistent. The amendment resolves this unequivocally - the obligation to run a farm expires with the entry into force of the new LDP.

The amendment to the AFOS also introduced an important novelty with regard to the State Treasury's pre-emptive right to shares in companies that are owners or perpetual usufructuaries' of agricultural real estate with an area of at least 5 ha or agricultural real estate with a total area of at least 5 ha. By the new wording of the provision, as of the effective date of the amendment, the National Support Centre for Agriculture ("NSCA") may exercise not only the pre-emptive right to shares in commercial companies owning the above-described real estate but also in a parent company which holds shares in a subsidiary that is the owner or perpetual usufructuary of such real estate.

What does such a change mean in practice? First of all, it extends the time for closing transactions on shares or stocks in such companies. Several additional weeks will be involved, i.e. the time that NSCA has to submit a possible declaration on exercising pre-emptive right, counting, of course, from the day of receipt by NSCA of the company's notification. In addition, during the entire process time needed to verify, e.g. as part of due diligence, properties owned not only by the parent company but also by its subsidiaries has also be taken into account. Moreover, before the enactment of the amendment, companies could manage the acquisition of real estate within the capital group in such a way that the disposal of shares in the company would not generate restrictions related to the NSCA regime. That is, another restriction and an even greater interference with the right of ownership appears.

The changes introduced heralded a breakthrough in the shaping of the agricultural system in Poland. However, as we all know - one swallow does not make a summer. One change loosening the restrictions is soon followed by another one "tightening the screw" on the other side. When hearing about the AFOS amendment, one could have hoped for the elimination of absurdities - such as a plot of land located in the middle of the city, which turns out to be agricultural. This is probably not the shape of the agricultural system that entrepreneurs were hoping for, especially those who have so far managed to structure their capital groups based on the current legislation.

### **Do you want to know more? Contact us!**

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