

POLISH FINANCIAL LAW

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REAL PROPERTY TURNOVER IN POLISH FOREIGN EXCHANGE LAW

As a rule, foreign exchange is subject of turnover in foreign exchange law. Even though in international turnover real property is not included in foreign exchange definition, its turnover is quite often subject to diverse foreign exchange restrictions. Such situation was occurring for transformation period¹, including still binding the Foreign Exchange Act of 27 July 2002 (Journal of Laws No. 141, item 1178 with amendments)².

Initially in accordance with this act, real property turnover in Polish foreign exchange law was subject of following direct restrictions:

- obtaining necessity of general or individual foreign exchange permits for acquisition by residents of real property situated in third countries³ and the rights attached thereto;
- duty of residents acquiring from non-residents or selling to non-residents real property, which value equals or exceeds equivalent of EUR 10 000, within 30 days after the day of acquisition or sale⁴.

1 See, for example E. Ruśkowski, *Komentarz do ustawy prawo dewizowe*, Warsaw 1994; E. Ruśkowski, *Prawo dewizowe*, Warsaw 1997; J. J. Skoczylas, *Prawo dewizowe. Komentarz*, Warsaw 2000.

2 Compare, for example E. Fojcik–Mastalska, *Nowe prawo dewizowe. Komentarz* 2003, Wrocław 2003; W. Wojtówicz, A. Grogol, *Prawo dewizowe*, Warsaw 2003; Z. Ofiarski, *Prawo dewizowe. Komentarze Zakamycza, Zakamycze* 2003.

3 Third countries shall mean states other than Republic of Poland which are not Member States of the European Union. Third countries belonging to the European Economic Area or the Organization for Economic Cooperation and Development shall be treated on a par with the Member States of the European Union.

4 Article 30 item 3 of the Act of 27 July 2002 in connection with § 5 of the Council of Ministers Ordinance of 10 December 2002 on manner, scope and time for the performance by residents making cross-border foreign exchange turnover of obligations of providing the National Bank of Poland with data to the extent necessary for

First of above mentioned restriction has been liberalized by Minister of Finance Ordinance of 3 September 2002 on general foreign exchange permits⁵, in that way there has been permitted for acquisition:

- by residents of BIT countries⁶ and rights to real property for the purpose of business activities, started and conducted in these countries;
- by residents, other than natural persons, of real property situated in third countries, if the price of its acquisition does not exceed equivalent of EUR 50 000 and acquisition does not take place in connection with business activities conducting.

At the moment of accession of Poland to European Union there appeared doubts on compliance of the mentioned above foreign exchange regulations with Article 56 and 57 of EC Treaty. Finally, the regulations have been changed by act on amendment of Foreign Exchange Act and other acts of 26 January 2007⁷, as well by establishing new executive regulations. In accordance with them real property turnover is subject of following direct restrictions:

- exportation, dispatch and transfer by residents to third countries⁸ of domestic or foreign means of payment, to be used for starting or expanding business activities in these countries, including the acquisition of real property for these activities' purpose, with the exception of transfer to third countries domestic or foreign means of payment for defrayal of expenses of activities consisting in direct provision of services in performance of signed contract or promotion and advertising business activities conducted by resident in the country;
- residents acquiring from non-residents real property which total value equals or exceeds the equivalent of EUR 10 000, are obliged to provide the

the preparation of the balance of payments and the external accounts of the state (Journal of Laws No. 218, item 1835).

5 Journal of Laws No. 154, item 1273 with amendments.

6 BIT countries in accordance with ordinance shall mean third countries which signed with the Republic of Poland the agreements on mutual support and protection of the investments. On a par with BIT countries there are treated: Russian Federation, Kirgizstan, Armenia, Georgia, Turkmenistan, Republic of South Africa and Algeria.

7 Journal of Laws No. 61, item 410.

8 Above amendment has also changed third countries definition. Currently, third countries shall mean states which are not Member States of the European Union, as well their dependent, autonomous and associated territories and dependent, autonomous and associated territories of the Member States of the European Union. Third countries belonging to the European Economic Area or the Organization for Economic Cooperation and Development shall be treated on a par with the Member States of the European Union. Dependent, autonomous and associated territories of the Member States of the European Union or third country belonging to the European Economic Area or the Organization for Economic Cooperation and Development shall be treated on a par with this state or country, if this par treatment results from international agreements binding the Republic of Poland to the extent regulated by act.

National Bank of Poland with data on acquisition or selling of real property within 30 days after conclusion of transaction⁹.

First of above mentioned restriction has been liberalized by Minister of Finance Ordinance of 4 September 2007 on general foreign exchange permits in that way there has been permitted for transferring by residents to BIT countries through authorized banks, domestic and foreign means of payment to be used for starting or expanding business activities in these countries, including the acquisition of real property for these activities' purpose¹⁰.

Above information means that currently only transactions of real property acquisition for starting or expanding business activities by residents with few countries of "third countries" group, are subject of restrictions. Then permits for these transactions must be granted by the President of the National Bank of Poland by way of individual foreign exchange permit. Besides, acquisition and selling by residents with non-residents of real property, which total value equals or exceeds EUR 10 000, are subject of registration duty in the National Bank of Poland. Infringement of these obligations is liable to criminal and fiscal sanctions, regulated by Articles 100 § 1 and 106l § 1 of the Penal Fiscal Code of 10 September 1999¹¹.

It's obvious that residents or non-residents trying to buy or sell real property pursuant to Polish foreign exchange law, must also comply with other restrictions, indirectly affecting on foreign exchange legality of such operations. There may be enumerated, among others, the following duties: written declarations of residents and non-residents crossing the state border to customs authorities or authorities of the Frontier Guards about importation into the country or exportation abroad of foreign exchange gold and foreign exchange platinum, irrespective of amount, also domestic and foreign means of payment, if their total value exceeds the equivalent of EUR 10 000; making by residents and non-residents money transfers abroad and settlements in the country connected with foreign exchange turnover through authorized banks if the amount transferred or settled exceeds the equivalent of EUR 15 000.

9 See § 5 of Minister of Finance Ordinance of 17 September 2007 on manner, scope and time for the performance by residents making foreign exchange turnover and the operators carrying out exchange operations of obligation of providing the National Bank of Poland with data to the extent necessary for the preparation of the balance of payments and international investment position (Journal of Laws No. 183, item 1308).

10 The ordinance has also changed BIT countries definition and countries treated on a par with them. Currently, BIT countries shall mean third countries which signed with the Republic of Poland the agreements on mutual support and protection of the investments. On a par with BIT countries there are treated third countries which concluded with European Communities and their Member States agreements binding of the Republic of Poland on partnership and cooperation, association and other similar agreements including provisions obliging to secure free movement of capital concerning direct investment, liquidation of these investments and income transfer from them.

11 Journal of Laws No. 83, item 930 with amendments.

In general, it can be affirmed that currently in Poland international turnover of real property is almost free with regard to foreign exchange provisions, but keeping in mind the duty of providing the National Bank of Poland with data and other less important direct duties concerning foreign exchange transactions.

Streszczenie

W prawie dewizowym przedmiotem obrotu są – co do zasady – wartości dewizowe. Mimo tego, że nieruchomości w obrocie międzynarodowym nie są zaliczane do wartości dewizowych, często ich obrót podlega różnorodnym ograniczeniom dewizowym. W Polsce tak właśnie było przez cały okres transformacji, włącznie z obowiązującą dzisiaj ustawą z dnia 27 lipca 2002 r. – Prawo dewizowe.