Country-Specific Legislation and Practice

Country Chapter

Poland

Introduction

One of the guiding principles of TEGoVA is to promote consistency of standard definitions of value and approaches to valuation trans-Europe. The publication of European Valuation Standards (EVS) provides the state, investors, the financial industry, valuers and their clients with a common benchmark which can be consistently applied, irrespective of the location of a real estate asset.

Whereas harmonisation of valuation standards enable recognised bases of valuation to be reported, the preparation and publication of a valuation must also respect client need, national legislation and custom. Customary differences, particularly in respect of valuation methodology, may result from the requirements of statute or regulation.

This Country Chapter illustrates differences that currently exist across Europe. The Country Chapters are not intended to provide definitive advice. The text that follows has been provided by TEGoVA Member Associations (TMAs) to outline country-specific legislation and practice.

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Poland

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The Polish Federation of Valuers' Associations (PFVA)

1. REAL ESTATE MARKET

OVERVIEW OF THE POLISH ECONOMY

Since the mid 1990s the Polish economy has been expanding at a fairly rapid pace albeit it slowed significantly during 2001 and 2002 and began to revive again in 2003. Increasing exports, industrial production, consumer spending, are the main drivers of this economic growth. Despite the world financial crisis, at the end of 2009 Polish GDP growth stood at 1.7% and was the highest in the UE. At the end of 2010 GDP growth in Poland was recorded at 3.8%

Positive GDP growth of around 4% is also expected in 2011 and 2012. Optimistic forecasts of GDP growth stand in contrast to the alarming state of Poland's public finances. According to the International Monetary Fund the budget deficit in Poland may soon reach 7.9% of GDP. Furthermore, Poland is noting a rapid growth in its public debt. In 2010 it reached 55.6% of GDP.

The value of Foreign Direct Investment inflow to Poland during the last 3 years fell from a peak level of € 17.2 billion in 2007 to € 7.5 billion in 2010.

Inflation in Poland reached 2.6% in 2010, higher than the 1.6% anticipated in the Budget Act.

Forecasts for 2011 and 2012 indicate rising consumer prices of 2.9% and 3 % respectively.

The most problematic area of the Polish economy used to be unemployment. The unemployment rate in 2004 was as high as 19.1% and decreased significantly to 9.5% in 2008. It started to rise again in 2009 and 2010 as a result of the global financial crisis but it is expected to fall in 2012 to 9.5%.

After 20 years of political transformation Poland is considered as a strong performing economy and the most promising market in the Central and Eastern Europe Region.

STRUCTURE OF THE REAL ESTATE MARKET AND ITS PARTICIPANTS

The real estate market in Poland is mainly focused around the residential, office, retail and warehousing sectors properties, with a growing hotel sector.

The main market participants are private and institutional investors, banks, developers, real estates consultants (valuers, property managers, leasing managers), accountants, tenants, insurance companies.

RESIDENTIAL MARKET

The residential market in Poland is still at a developing stage. There is still an evident shortage of of some 1.7 million residential units. According to the Central Statistical Office, between 2003 and 2010 only 960 000 units were delivered to the market.

Residential prices in Poland which had been growing for several years peaked in the second half of 2007. The shortage of flats, growing affluence and ease of obtaining bank loans had led to boom in residential development. In 2006/2007 the market was becoming overheated with foreign investors, mainly Spanish, entering the market and acquiring flats on speculative basis. By the end of 2008, the global financial crisis, overinflated prices and less favourable mortgage conditions offered by banks led to a sharp drop in demand with a consequent reduction in transaction volume.

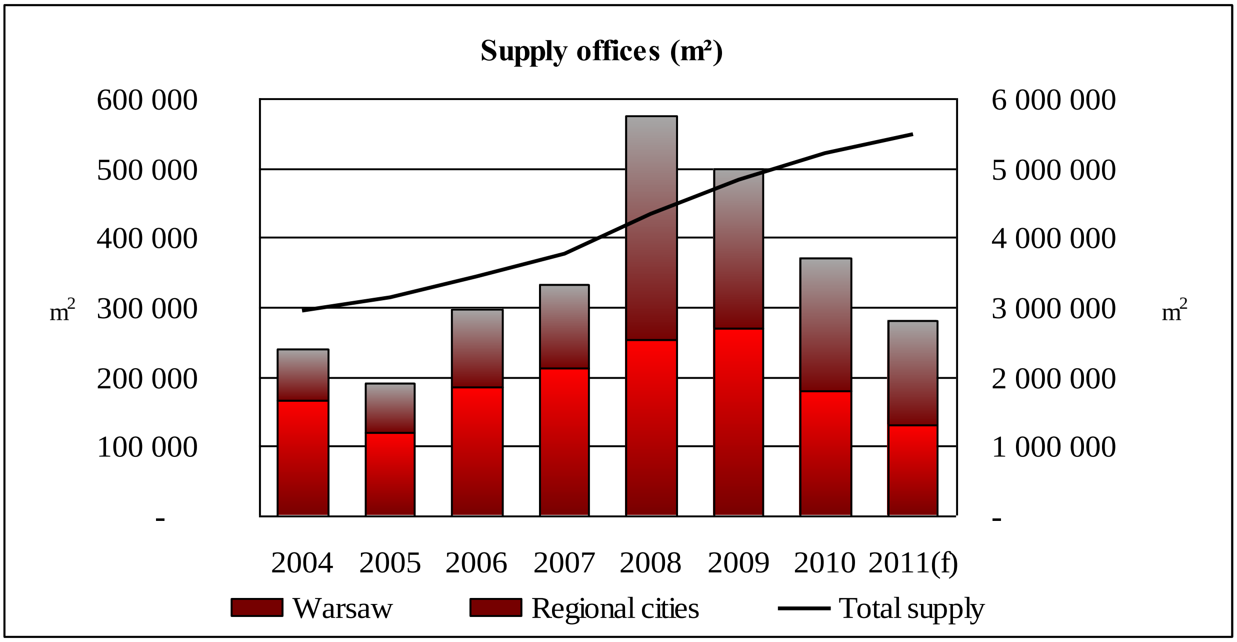
Since 2009 most demand has come from owner occupying individuals. Whilst latent demand is still strong because of the shortage of residential accommodation in Poland, banks' restrictive lending policies have tempered the number of transactions. In 2009, a total of 21 150 apartments were sold in the 6 largest markets in Poland. In 2010 the figure amounted to 22 750 apartments sold and it exceeded sales in the previous year by 7.5%.

In 2010 banks granted more mortgages encouraging a revival in demand. On the other hand the number of new apartments delivered to the market decreased by 15% from around 160 000 in 2009 to 135 000 in 2010 whilst the number of building permits issued remained at a similar level during those years, some 180 000 per annum. A positive sign of recovery can be seen in the 10% increase in the number of apartments started during 2010 of up to 160 000 units. Nearly 25% of the total distribution of new supply in major Polish cities is found in the main cities of Warsaw, Kraków, Wrocław, Poznań, Gdańsk and Łódź.

COMMERCIAL MARKET

OFFICES

Total stock of modern office space in Warsaw has reached 3.4 mln m^2 of which 180 000 m^2 was completed in 2010. In the regional cities of Kraków, Wrocław, Trójmiasto, Poznań, Katowice and Łódź total stock exceeds 1.8 mln m^2 of which 190 000 m^2 was completed in 2010. New supply in 2011 is likely to reach 280 000 m^2 in Poland and 130 000 m^2 in Warsaw.



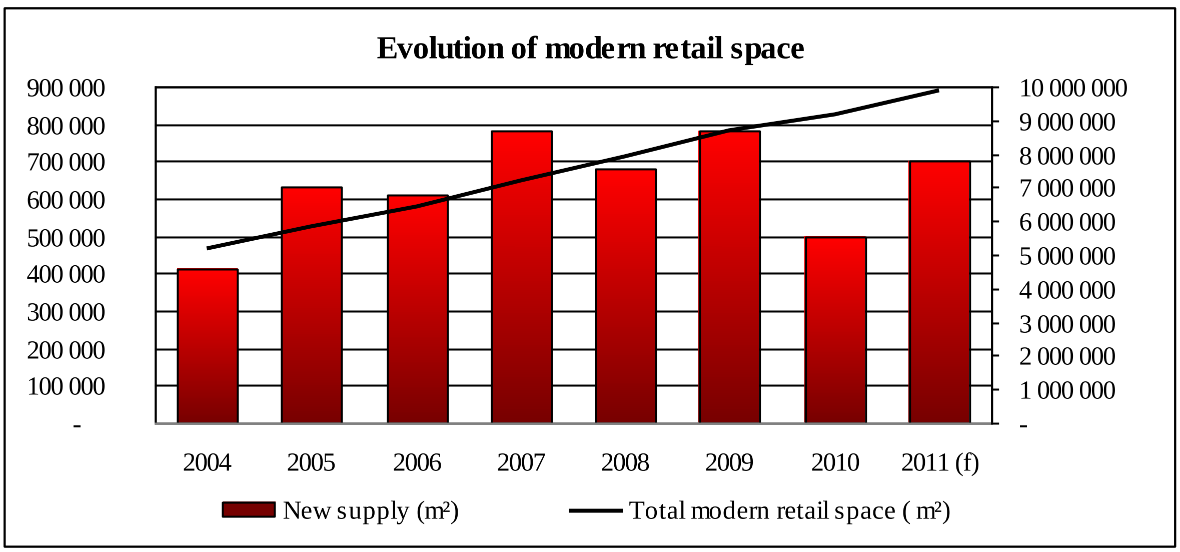
At the end of 2008 there was a significant fall in demand for office space throughout Poland leading to increasing vacancy rates and decreasing rents. The latter trend was reversed in 2010. In 2010 some 550 000 m^2 of offices were leased in Warsaw, 50% more than in 2009. During 2009 and 2010 the number of pre-lease agreements decreased significantly compared to previous years. Most lease agreements in the last two years have been in respect of small areas of up to 1 000 m^2.

The lowest vacancy levels are currently being noted in Wrocław (5%), Warsaw (7.5%) and Poznań (8%) and the highest in Łódź (24%).

Rental levels, following a 10% fall in 2009 have now stabilised. In 2010 rents paid for the best offices in Warsaw were at a maximum level of € 28/m^2/month. In regional cities they were in the range of € 11 to € 17/m^2/month.

RETAIL

Total modern retail space in Poland exceeds 9.1 million m². 500 000 m² of new space was completed in 2010, which constitutes 35% less than in 2009. 40% of modern retail space was delivered in medium-sized cities of 100 000 – 200 000 inhabitants, for example in Płock (Galeria Mazovia and Galeria Mosty) and Wałbrzych (Galeria Victoria). Interest from investors continues to grow in smaller towns such as Łomża. In first quarter of 2011 some 950 000 m^2 of new space was under construction following a resumption of developments put on hold during the global financial crisis and 700 000 m^2 should be completed this year.



The stock of retail space is highest in the top ten cities and averages 780 m^2 per 1000 inhabitants. In 2010 the most rapid growth of retail space per capita was noted in Łódź, Płock, Wałbrzych and Tarnów. Small units in prime shopping centres in the largest cities attract the highest demand. Vacancy in the major cities remains at around 4%.

Prime shopping centre rents in regional cities stand at around € 45 /m² monthly for units of 50 m^2 to 100 m^2. Prime rents in Warsaw remain stable at up to € 80/ m^2 monthly for the best units of 50 m^2 to 100 m^2.

WAREHOUSES

Modern warehouse stock in Poland totals 6.3 million m^2 in 150 industrial parks. New supply in 2010, mostly in built to suit projects, amounted to 270 000 m^2 and was at its lowest level since 2004. The leading developer in 2010 was Panattoni which completed some 210 000 m^2 of new warehousing space representing 80% of total warehouse development activity. New supply of some 300 000 m^2 mostly built to suit will be delivered in 2011.

Take up in 2010 recovered to 1.5 million m^2 (including 500 000 m^2 lease renewals) after the slowdown of 2009. Demand for modern warehouse space throughout Poland is strongest amongst the automotive, pharmaceutical and fast moving consumer goods retailing sectors, as well as third-party logistic providers. The Upper Silesian Region accounts for 35% of all leasing activity.

The vacancy rate in logistics parks in the Warsaw region is highest at 19%. Vacant space in other areas varies from 6.6% (Tri-City) to 16% (Wrocław).

Top rents of € 4 to € 5/m^2/month are being paid in Warsaw's Zone I and € 3 to € 4/m^2/month in Kraków and Łódź. Rents in the regions with a relatively high vacancy rate including Warsaw Zone II, Upper Silesia, Wrocław and Central Poland are stable at € 2.2 - € 2.8/ m^2/month.

PROPERTY INVESTMENT

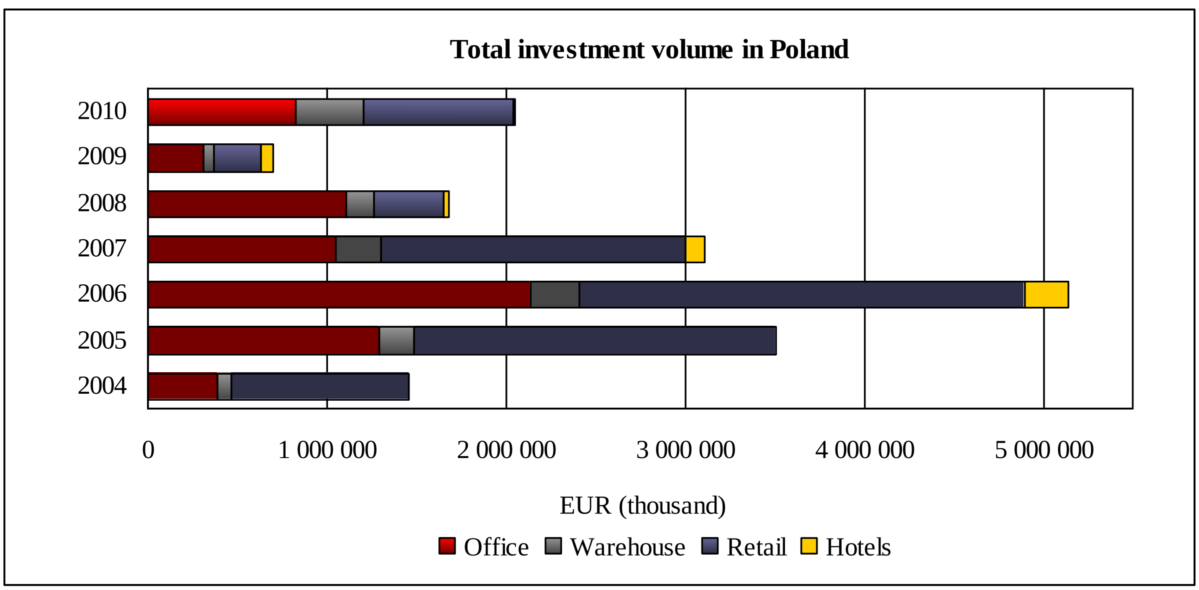
In 2010 total property investment volume exceeded € 2 billion, significantly more than the € 700 million recorded in 2009 and 20% higher than in 2008. Most transactions were concluded in respect of offices and shopping centres. However such high investment volume was largely the result of two portfolio transactions accounting for some 30% of the total.

In second quarter 2010 CA Immobilien Anlagen AG purchased Europolis with its office and warehouse portfolio for a reported € 272 million. The portfolio included Saski Crescent, Saski Point, Sienna Center, Warsaw Towers and Bitwy Warszawskiej office buildings and the Europolis Park Błonie and Europolis Park Poland Central warehouses. The transaction also included properties in Hungary and the Czech Republic. In third quarter 2010 Unibail-Rodamco purchased from Simon Ivanhoe five shopping centres in France and two in Warsaw namely Arkadia and Warszawa Wileńska at a total reported price of € 715 million.

2010 saw increasing interest in office buildings outside of Warsaw. Grunwaldzki Center in Wrocław was the first office transaction outside of Warsaw in 2010 and the second in two years. In 2010 the warehousing investment market showed positive growth with an 18% share of the total investment volume.

German funds such as RREEF, Union Investment Group and SEB Immo Invest were the most active in the Polish market in 2010.

Growing investment activity is once again leading to yield compression. Prime office yields have dropped below 6.5%. Yields in respect of prime retail properties stand at around 6.25%-6.5% and warehouses are fetching 8.25% to 8.50%. Improving market sentiment is likely to lead to further yield compression in 2011.



OTHER REAL ESTATE MARKETS

HOTELS

Until the 1990s, the hotel market in Poland was very limited in terms of quality and facilities on offer. The market has gradually developed following Poland's EU accession in 2004 and an increase in investment from international hotel chains. Their expansion has been initiated through high- end lodging in the largest cities in Poland and then followed by development of mid market hotel brands in secondary locations. Despite growing interest of international operators, the hotel market in Poland is somewhat fragmented. According to the Hotel Institute about 12% of existing hotels belong to international hotel operators with the rest owned by individuals and small capital groups owning between 2 to 3 hotels.

Both the number of hotels and occupancy rates were rising until 2008. High occupancy rates and ADR (Average Daily Rate) as well as the choice of Poland as co-host of the European Football Championship "EURO 2012" provide the necessary encouragement for further hotel development. However the pace of development decreased at the end of 2008 as a result of the global financial crisis and problems with obtaining finance. Additionally, in 2009 the majority of hotel chains reported a decrease in occupancy rates by ca 5 percentage points. In response hotel operators reduced the average room rates leading to a significant reduction in ADR.

2. REAL ESTATE VALUATION

The Real Estate Management Act 1997 and the Ministerial Regulations concerning the valuation of property and valuation reporting 2004 regulate real estate valuation practice in Poland.

Also The Polish Federation of Valuers' Associations (PFVA) publishes a set of valuation standards titled: "General National Principles of Valuation" (Powszechne Krajowe Zasady Wyceny – PKZW). The latter are divided into Basic National Valuation Standards (Krajowe Standardy Wyceny - Podstawowe or KSWP) and Specialist National Valuation Standards (Krajowe Standardy Wyceny – Specjalistyczne or KSWS). The standards are as follows:

KSWP 1 – Market Value and Depreciated Replacement Cost

KSWP 2 – Values Other than Market Value

KSWP 3 – The Valuation Report

KSWS 1 – Valuation Standards for Public Purposes

KSWS 2 – Valuation for Financial Reporting Purposes

KSWS 3 – Valuation for Loan Security Purposes

Under The Real Estate Management Act 1997 such standards may become part of Polish law provided they are formally accepted by the Minister of Infrastructure. To date, the latter has approved KSWS 3 – Valuation for Loan Security Purposes.

Under the new standard, whilst market value continues to be the basis of value for all loan valuations, in addition to expressing a well supported opinion of value, the valuer must also provide a separate assessment of the risks associated with the property being valued, in terms of predicted future changes in the market. Thus valuers are required by law to forecast future market conditions albeit stopping short of predicting future value. Paragraph 4.3 of KSWS 3 states "*The valuer has the obligation on the basis of available sources and market knowledge to point out areas of risk associated with the property being valued, including foreseeable changes in the given market as well as the risk associated with the assessment of the subject property by investors together with a general opinion about the direction of the influence of the above on the value of the property being valued in the future. The above additional information is to be set out in the form of an attachment to the valuation report"*

Also of significance is paragraph 4.4 under which banks may instruct valuers to prepare a "sensitivity analysis" *"…which will allow for a fuller assessment of risk of accepting a concrete property as the subject of loan security. The sensitivity analysis sets out the sensitivity of the value of the subject property to changes in variable inputs, influencing such value"*

In addition to the above valuation standards, the PFVA has so far published 4 "Interpretation Papers" (*Noty Interpretacyjne*) as follows:

N1 1 – The application of the comparative approach to property valuation

NI 2 – The application of the income approach to property valuation

NI 3 – The application of the cost approach to property valuation

NI 4 – The application of the residual method of property valuation

Market Value

The definition of market value adopted by National Valuation Standards published by The Polish Federation of Valuers' Associations is consistent with and based upon the definition of market value set out in European Valuation Standards 2009.

Article 151, paragraph 1 of The Real Estate Management Act 1997, defines market value as follows:

"*The Market Value of a property is the most probable price which can be obtained on the market, estimated having regard to transaction prices based on the following assumptions:*
The parties to the transaction were independent, did not act under pressure and had a firm intention of concluding an agreement,
The time before the transaction was sufficient for the property to be exposed on the market and for the parties to negotiate the conditions of the agreement".

Methodology

Comparative Approach

The comparative method of valuation is considered to be the method of first choice under Polish law.

Article 4.1 of the Ministerial Regulations concerning the valuation of property and valuation reporting 2004 states "*In applying the comparative approach there is a need to know transaction prices of properties which are similar to the property being the subject of the valuation as well as the characteristics of these properties which influence the level of their* *prices"*. Article 4.2 continues "*In a comparative approach one applies the pairs comparison method, the adjusted average price method or a statistical market analysis method"* and Article 4.3 states *"In applying the pairs comparison method, the subject property, whose characteristics are known, is compared respectively with similar properties which have been the subject of a market sale and in respect of which the transaction prices, terms of the transaction, and characteristics of these properties are known.*

The comparative approach is most commonly executed by means of the "*pairs comparison method"*. The method relies on the comparison of the subject property in turn with the comparable properties sold. Transaction prices are first devalued in terms of a unit price per sq m of land or building and then adjusted for observed differences between the subject property and comparable properties. Typically the average of the adjusted price is then applied to the valuation of the property being valued.

For the purposes of a valuation carried out by mean of the comparative approach the most useful information about sale prices in Poland is that recorded by Notaries in deeds of sale. All qualified valuers have access to these records.

Another often employed comparative method is the so called "adjusted average price method". Article 4.4. of the Ministerial Regulations concerning the valuation of property and valuation reporting 2004 states "*In applying the adjusted average sale price method, for comparison one adopts from the relevant market in terms of the location of the subject property being valued at least 11 to 19 [the Polish word used is "Kilkanascie" which means a number between 11 and 19 inclusive] similar properties which have been the subject of a market sale and in respect of which the transaction prices, the transaction terms and the characteristics of the properties are known. The value of the subject property being valued is assessed by means of adjusting the average price of the comparable properties by factors which reflect the differences in the respective characteristics of these properties."*

Once information about comparable properties is gathered, the average adjusted price method may be applied by as follows:

- calculation of average unit sale price,
- calculation of the difference between the highest and lowest unit sale price,
- calculation of the minimum unit sale price as a fraction of the difference between the highest and lowest unit sale prices, and
- calculation of the highest unit sale price as a fraction of the difference between the highest and lowest unit sale price.

After completing the above steps, the valuer must then consider what value relevant features account for the difference between the highest price and the lowest price in the sample. In most cases location is considered to be the most important feature followed by other value relevant attributes including size and access. The final stage of the adjusted average price method is a consideration of the value relevant attributes of the subject property in comparison with the sample properties having the highest and lowest values, to decide on the factor which should be applied in turn in relation to the subject property for each such value relevant feature. The sum of all such factors is then multiplied by the average unit sale price to arrive at the average adjusted sale price which is then applied to the valuation of the subject property.

Income Approach

Article 6 of the Ministerial Regulations concerning the valuation of property and valuation reporting 2004 states " *In applying the income approach a knowledge of income derived from or possible to derive from rents and other income from property being the subject of valuation and comparable properties is necessary".*

Article 7.1 states "*Under the Income Approach the investment method or profits method are applied".* Article 7.2 states "*The investment method is applied in arriving at the value of a property generating or able to generate income from rents from occupational or land leases, the level of which can be established on the basis of an analysis of market rent"* and Article 7.3 "*The profits method is applied in arriving at the value of a property generating or able to* *generate income which cannot be established under sub paragraph 2. Such income is equivalent to the owner's share in the income from a property derived from an activity carried out on the property being valued and at comparable properties".* Article 8 states "*The Investment method and profits method is applied by means of a simple capitalization technique or the discounted cash flow technique*".

Offices, Shops and Warehouses in Poland are typically valued by means of the investment method. The method involves the conversion of estimated rental income flow from the property being valued into an appropriate capital sum. A multiplier, or yield, is applied to the projected net rental income streams. This yield is derived from an analysis of market transactions of comparable properties.

In valuing a commercial property a valuer might simply capitalize the annual net rental income derived from the property by an appropriate yield, derived from market analysis but software assisted discounted cash flow (DCF) is becoming more popular.

Cost Approach

Under Polish law the cost approach is treated separately from the assessment of market value and may not be applied in arriving at the latter. Article 153.3 of the Real Estate Management Act 1997 states "*the cost approach entails the assessment of the value of property on the assumption that such value equates to the costs of replacing the property reduced by the value of depreciation of the property. Under this approach the cost of acquiring the land and costs of replacing the buildings are assessed separately.*

3 REAL ESTATE VALUERS

Under Polish law it is unlawful to practice as a property valuer without possessing a statutory qualification (*uprawnienia zawodowe*). Article 156 of the Real Estate Management Act 1997 as amended (*Ustawa o Gospodarowaniu Nieruchomosciami 1997)* provides that "*A property valuer (rzeczoznawca majatkowy) prepares in writing an opinion of the value of a property in the form of a valuation report*". Article 174 defines property valuer as "*an individual possessing professional qualification rights in the area of property valuation, awarded under the regulations set out in sub section 4"*. Sub section 4 sets out the procedures for awarding practising licences to property valuers, brokers and property managers.

Any person wishing to become qualified in real estate valuation must first obtain a masters degree followed by a ministry approved postgraduate diploma in valuation studies. He or she must then undertake at least a year of structured training under the supervision of an experienced valuer during which time he or she must prepare a portfolio of 15 valuation reports of properties for a variety of purposes. Finally the candidates must pass a written and verbal national examination for valuers set by the Ministry of Infrastructure. Only on passing the written examination will a candidate be admitted to the second part of the examination in the form of an interview and a defence of a selection of valuation reports from amongst those prepared by the candidate during structured training, before the Examination Commission. S

Since the introduction of the licensing system, examinations have been held every month. The examinations are difficult, with an average success rate of well below 50%. By 2010 nearly 5,000 valuers had obtained a valuation licence.

It should also be noted that a growing number of Polish qualified valuers are gaining the "Recognised European Valuer" certificate launched by The European Group of Valuers' Associations (TEGoVA) in 2008.

Valuers' Organization

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