

Acquisition of Property in Poland

May 2007

General
<p>Since Poland joined to European Union there has been a reduction in the bureaucracy involved in purchasing real estate.</p>
Real Property Rights
<p>The following rights may be of interest to a foreign investor: (i) ownership, (ii) perpetual usufruct; (iii) leasehold and tenancy; and (iv) leasing.</p> <p><i>1. Ownership</i></p> <p>The ownership (<i>prawo własności</i>) is an unlimited right to a real estate, equivalent to a freehold title. Subject to the minor limitations described below, ownership conveys freedom to use and transfer real estate. Buildings erected on the land constitute a part of the real estate and cannot be transferred separately from the land.</p> <p><i>2. Perpetual usufruct</i></p> <p>Perpetual usufruct (<i>użytkowanie wieczyste</i>) is a right of use which may be granted by the State in relation to State-owned land, or by the municipality (the "Gmina") in relation to Gmina-owned land. In both cases the respective entity remains the owner of the land. In principal, perpetual usufruct does not differ essentially from an ownership as described above. Perpetual usufruct is a transferable right and may be sold, inherited, or leased. Also, a mortgage may be established on a perpetual usufruct.</p> <p>However, perpetual usufruct is conveyed for a specific period of time. The word "perpetual" is insofar misleading, since a perpetual usufruct may be granted for a maximum of 99 years, although it is renewable. The other important difference to ownership is that perpetual usufruct is established for a certain purpose - for example, housing, industry, etc. A change of purpose without the consent of the land owner may result in the termination of this right. Moreover the holder of the right of perpetual usufruct is obliged to pay annual fees to the owner of the land up to 3% per annum of the value of land, depending on the purpose for which the land is used (i.e. residential, commercial). The buildings erected on the land are owned by the holder of perpetual usufruct of the land. However, at the point of expiration of the perpetual usufruct, ownership of the buildings is transferred to the land owner. The right of perpetual usufruct is the most common form of title to real estate for state-owned enterprises.</p> <p><i>3. Leasehold and tenancy</i></p> <p>A leasehold (<i>najem</i>) is established by a contract pursuant to which the lessor is obliged to convey the use of the property to the lessee and the lessee is obliged to pay the lessor the agreed-upon rent.</p>

In a tenancy agreement (*dzierżawa*), in addition to the right of use, the tenant is entitled to the profits from the respective object. Consequently, the term “lease” usually refers to office premises, houses or apartments, while “tenancy” refers to agricultural lands or machines whereby the tenant is entitled to crops or industrial output. Except as provided for by certain mandatory rules under the Civil Code, parties to a contract are free to regulate their relationship with respect to real estate. A lease or tenancy agreement may be concluded for a definite or indefinite period of time. A lease for a definite period of time cannot be terminated before the expiry of the agreed-upon period, except for cases of statutory default or causes specified in the contract. A lease may be entered into for a limited period of time of maximum of 10 years and the tenancy for a maximum of 30 years. The lease or tenancy for a period, which exceeds these thresholds is regarded as concluded for an indefinite period of time and can in any case be terminated upon notice given after the lapse of these periods.

4. Leasing

The institution of leasing was introduced to the Polish Civil Code as of December 9, 2000. The general principle of leasing under Polish law is that the lessor transfers the leased object to the lessee for a definite period and the lessee pays the lessor the remuneration agreed in instalments which in total at least equals the price paid by the lessor for the acquisition of the object of the lease (if the object of the lease is to be purchased by the lessor) or the value of the object of the lease (if the object of the lease is already owned by the lessor). The lessor is not liable towards the lessee for whether the object of lease is usable for the agreed purpose. If the object of the lease is lost due to circumstances for which the lessor is not responsible, the lease will expire and the lessee is obliged to pay, at the lessor's demand, all unpaid installments as specified in the contract, reduced by the lessor's benefits resulting from the earlier payment of installments and the termination of the lease (e.g., insurance compensation, benefits resulting from the present value of future cash flows). In addition, the lessor may claim damages from the lessee. The lessee is obliged to cover all costs related to the maintenance, ownership, and possession of the object of the lease (e.g., real property tax, cost of any repairs, etc.). The lessor is not liable to the lessee for any defects in the object of the lease, unless the lessor is responsible for such defects. If the lessor terminates the lease due to circumstances for which the lessee is liable (e.g., a delay in payment of installments or other costs, improper use of the object of the lease) the lessee is obliged to pay, at the lessor's demand, all unpaid lease installments as specified in the contract, reduced by the lessor's benefits resulting from earlier payment of the installments and the termination of the leasing.

Encumbrances and Other Limitations of use of Property Rights

Polish law recognizes certain limited rights of third parties to real estate (*ograniczone prawa rzeczowe*) such as the right of usufruct or servitude. Owners of neighbouring real estate can, for example, file a petition to the court to establish a servitude such as a right of passage, thus enabling such owners access to a public road. Furthermore, Polish law provides for mortgages (*hipoteka*) as a form of security for debts. In order to ensure confidence of trade, mortgages on real estate in Poland must be entered into the land and mortgage register (*księga wieczysta*), as described below (the “Registers”), in order to be valid. A properly entered mortgage remains valid even if the land is subsequently sold to a third party e.g. in case of a change of ownership of the real estate.

Land and Mortgage Registers

Land and Mortgage Registers (the "Registers") are maintained by the Regional Courts and provide information on: (i) the location of parcels of land, (ii) the ownership status of land, (iii) encumbrances of the land, and (iv) mortgages. They form the basis for asserting the legal status of real estate in Poland. Registers are public and may be reviewed by any interested party at the seat of the Court. Presently the Register is in the process of transition from paper into the electronic version. The process is performed step-by-step and may cause delays during the transition process of a specific Register. After completion of the process it will be possible to review every Register by access to the Registers network.

Each real property should have a separate Register and a separate Registry Number assigned by the Court. Unfortunately, Registers still have not been created for all real estate in Poland. A Register may, however, be established upon submission of an application by the owner of the real estate. In cases where a Register has not been established for the real estate yet, it is necessary to depend on alternative sources of information, such as the Land Record. Unlike the Land and Mortgage Register, it is maintained for all real estate in Poland but is unfortunately not a legally binding source of information on the legal status of real estate. In case of a discrepancy between the status of real estate described in the Register and its actual status, a person who has relied on information contained in the Register and has acquired real estate rights from the person indicated in the Register as holder of those rights, is protected by law. Despite the inconsistency, for example, a buyer becomes the rightful owner of the real estate, provided, however, he was acting in good faith.

Land use Planning

The Land Use Plan (the "Plan") sets forth the conditions for the development and use of land in a given area. Plans are prepared at the level of the Gminas, Voivodships and the entire country. The preparation of Plans at the Gmina level is not obligatory unless specific provisions of the law provide otherwise. Nevertheless, only in Gminas it is obligatory to prepare a Study of Land Use (the "Study"). The Study must encompass the whole territory of a Gmina. Plans prepared by a Gmina must comply with the Study. It is necessary to verify with the appropriate Gmina authorities whether such Plan has been adopted and, if so, whether the proposed investment complies with it. Unlike other Plans, a Gmina Plan is highly specific, and may include different requirements, building principles and standards for potential construction projects. The Plan may designate land either for agricultural/forestry purposes or construction purposes.

1. Real Estate Designated for Agricultural/ Forestry Purposes

Real estate designated to agricultural purposes is protected under the Law on Agricultural and Forests Land Protection. This Law imposes substantial limitations on the use of such land for non-agricultural purposes.

However, an investor may apply for a change of the designation. Any amendment, however, regarding high-quality agricultural land (class I through III) requires the consent of the Minister of Agriculture and a change of use regarding forestry land requires the consent of the Minister of Environmental Protection. A change of use of lower-quality agricultural land (class IV and in certain cases V-VI) requires only the consent of the local Wojewoda (the "Voivod").

2. Real Estate Designated for Construction

Where a plot is designated for construction purposes, the Plan further specifies whether this is for:

(i) housing, (ii) service, (iii) industrial, (iv) storage, (v) infrastructure or (vi) recreational projects. A potential investor can use the plot only in accordance with the Plan.

If no Plan has been adopted in the Gmina where the development project is to be located, a potential investor must apply for issuance of an administrative decision on guidelines for a

construction (Zoning Decision). The Zoning Decision can only be issued if five conditions are met: (i) the existing buildings on, at least, one plot in the near vicinity are such that new buildings may adopt to their function and parameters, (ii) the plot has an access to the public road, (iii) the existing or projected improvement of the plot is sufficient for the construction, (iv) the plot does not require any re-qualification from agricultural/forest land to construction land, (v) the Zoning Decision remains in conformity with any other laws.

The Zoning Decision may be issued for more than one applicant. It does not grant any, even close to, ownership rights and does not entitle to receive a building permit. The only purpose of the Zoning Decision is to adjust the potential construction to the neighbouring area in the absence of the Plan.

Permits

A special treatment is guaranteed for investors from the European Economic Area. Although Poland was granted a transitional period for real estate trade, the permit is only required for purchase of agricultural and forests land (until, in principal, 30 April 2016) and so called second homes (until 30 April 2009). This last restriction does not apply if the investor intends to buy a second home for carrying out a commercial tourism activity. There are further exceptions for investors who already lived and/or carried out agricultural activity in Poland. In general therefore investors from the EEA do not need a permit for the purchase of land for the purpose of carrying out commercial activity.

Tender

Pursuant to the Law on Real Estate Management, real estate owned by the State or the Gmina can be sold only through a public tender, with minor exceptions. The same applies to the sale of the right of perpetual usufruct.

Notarial Deed of Purchase

The transfer of real estate must be made in the form of a notarial deed, executed by a notary public (*notariusz*) in order to be valid. The parties must pay 2% of the market value of the real estate as a transfer tax to the relevant local tax office. The notary public is obliged to collect the tax upon the execution of the notarial deed. An application to the relevant Court for entry of the transferred rights into the Land and Mortgage Register should be included in the notarial deed transferring the title to the real estate. The notary public is obliged to transfer the court fee for such applications to the Court and must collect such fee from the party concerned at the execution of the notarial deed. The notary public will also collect the notarial fee depending on the value of the transaction.

Support from EU Structural Funds

Poland joined the European Community on 1 May, 2004 and subsequently became eligible for support from EU Structural Funds.

Entrepreneurs carrying out business activity in Poland can be supported by grants within the framework of public aid provided in one of the Operational Programs. Operational Programs are co-financed from structural funds – European Regional Development Fund and European Social Fund.

Subsidies are granted for entrepreneurs, who are investing in fixed assets (i.e. buildings, machines), intangible assets (i.e. royalty) and create new workplaces. Maximum level of support is 65% of investments.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.