

ACT
of 6 July 1982
ON LAND AND MORTGAGE REGISTERS
AND ON MORTGAGE

(Consolidated text: Dziennik Ustaw 2013, item 707, item 830, item 941)

SECTION I. LAND AND MORTGAGE REGISTERS

**Chapter 1. Provisions on Rights Evidenced in Land
and Mortgage Registers**

Article 1. 1. Land and mortgage registers shall be kept in order to establish the legal state of immovable property.

2. A land and mortgage register shall be opened and kept in respect of the immovable property which has not yet had a land and mortgage register or whose land and mortgage register has been lost or damaged.

3. Land and mortgage registers may also be kept in order to enable establishing the legal state of the cooperative member's ownership right to an accommodation.

Article 2. Land and mortgage registers shall be freely accessible. No one may plead ignorance of entries in a land and mortgage register, nor of applications which have been noted therein.

Article 3. 1. An entry of a right evidenced in a land and mortgage register shall be presumed to be reflecting actual legal state.

2. A right which has been deleted from a land and mortgage register shall be presumed non-existent.

Article 4. A right presumed to be enjoyed under a relevant entry in the land and mortgage register may not be questioned by the presumption that a right arises from possession.

Article 5. Should there be inconsistency between the legal state of the immovable property evidenced in the land and mortgage register with its real legal state, the contents of the land and mortgage register shall decide in favour of the person who has, by performing an act in law with the person entitled under the contents of the register, acquired the right of ownership or another right in rem (land and mortgage registers' public credibility warranty).

REAL ESTATE IN POLAND

Short legal guide

1. Polish real estate law - introduction

Polish real estate law ensures transparency and reliability thanks to the codification of rules and the registration of legal titles to property in a court register.

The Civil Code is the main source of legal rules governing property rights, whereas the Act of 6 July 1982 on Land and Mortgage Register and on Mortgage provides an additional set of rules relevant for the title registration system and various types of mortgages.

Apart from full ownership of real estate, which is similar to the English legal concept of freehold, Polish law also provides for a so-called perpetual usufruct, which is similar to ownership in that it is freely transferable and ensures the use of the property in a similar manner as an owner.

Polish law also provides for a number of limited property rights, such as mortgages, usufruct and servitudes (rights similar to easements under English law). On the other hand, under Polish law, two types of lease of property are possible.

Titles are registered in the Land and Mortgage Register, which is kept by district courts having jurisdiction over particular properties. The data kept by the district courts across the country is currently being transferred to a national electronic register; a great portion of properties can already be checked at Land Register Information Centre outlets.

The register provides a statutory warranty for the acquirer of real estate that the rights entered in the register exist as they are registered, provided that the acquirer acted in good faith and acquired the property for a valuable consideration.

2. Legal titles

2.1 Ownership

Ownership title bestows the broadest rights over real estate in Poland. Pursuant to the Civil Code, an owner can possess and use, derive profit and income, encumber, transfer and dispose of its real property, subject only to statutory limitations. Ownership of land extends in the space above and underground; however certain limits in that regard result from the Geological and Mining Law, the Act on Waters, as well as certain general rules resulting from civil law. The Civil Code also contains, among other things, rules regarding relations between neighbours over adjacent properties.

Real estate can be subject to co-ownership, which can exist in two different forms:

- fractioned co-ownership (similar to the English law concept of tenancy in common), where each of the co-owners may transfer or dispose of its share by will;
- joint co-ownership (which can be compared to some extent to the English concept of joint tenancy), where the co-owners have the same undividable interests in the property, e.g. spouses subject to joint marital status or heirs before the division of an inherited estate.

Apart from traditional forms of transfer of real estate, (e.g. sale, donation, inheritance, disposal), ownership can be gained by mere lapse of time, by way of so-called usucaption. Depending on whether the possession of a real property is held in good or bad faith, the ownership title may pass after twenty or thirty years.

In the event of a breach of a real property owner's rights, the owner may claim reinstatement in their rights, a ban on continued breach or a reinstatement in possession.

2.2 Perpetual usufruct right

The perpetual usufruct right ("PUR") is very common in urban areas and ensures substantially similar rights to those of an owner. The PUR-holder can transfer or encumber its right, as well as protect the title by legal actions on the same terms as an owner. Technically speaking, the PUR is a type of property right by virtue of which the user has a right to use a property owned by the State Treasury or municipality for a limited period of time, usually for 99 years. The user is free to construct on the property, and any construction erected becomes the property of the perpetual user. An annual fee is payable to the State Treasury or municipality in respect of the use of the property.

Even though there are differences between an ownership title and the PUR (as described below), the PUR is commonly used for investment purposes both by domestic and foreign investors, whether for development projects or by purchasing buildings developed on land subject to the PUR. Generally, banks have been ready to finance such investments, and insurance companies have provided insurance cover on the same terms as in the case of properties to which an ownership title is attached.

The main characteristics of the PUR, as opposed to an ownership title, are as follows:

- while the State Treasury or a relevant municipality (local self-government unit) own the land, they grant the PUR for development purposes defined in an agreement. A PUR can be transferred to a third party without a further agreement with the consent of the State Treasury or municipality;
- a PUR can be granted for a maximum of 99 years and not less than 40 years, with the right of extension for an additional 40 to 99-year period. The State Treasury or municipality can refuse to extend a PUR only in the case of an 'important public interest'

and any such refusal can be challenged in court, which would need to verify the existence of such an 'important public interest'. In practice, as long as the basic use for which the PUR has been granted is respected, a refusal to extend a PUR is very unlikely, particularly because it would entail the obligation to reimburse the PUR-holder with the market value of the buildings and facilities developed on the land;

- any buildings or other facilities developed on the land subject to a PUR are owned by the PUR-holder, notwithstanding the fact that the ownership title of the land remains, respectively, with the State Treasury or municipality. As explained above, in the event of the termination of a PUR, its holder should be compensated in respect of any buildings or facilities developed on the land;
- the PUR-holder is allowed to use the property subject to PUR only for the purposes stipulated in the agreement executed at the beginning, when the PUR is granted (generally such agreement is executed only once, with the first PUR-holder), e.g. residential, commercial or industrial use. In the event the property is used in breach of the provisions under which the PUR has been granted, the PUR can be terminated before the expiry of the relevant term.
- An annual fee is payable by PUR-holders to the entity granting the PUR. In the case of the establishment of a PUR, the first holder is liable to make an initial payment, which may range from 15% to 25% of the value of the property. All subsequent annual payments are calculated as a percentage of the land value, and the rates depend on the specific use for which the PUR has been granted, for example:
 - 1% in the case of land granted for residential, agricultural or sports purposes, as well as for the purposes of technical and other publicly useful infrastructure,
 - 2% in the case of tourist activity,
 - 3% in the case of commercial use.

The annual fees can be subject to formal adjustment procedures carried out in the event of changes in the land value (however the expenditures incurred in respect of developed buildings and facilities reduce the value of the basis for the calculation of the fee). The value of the real estate, which is calculated according to statutory rules for the specific purpose of calculating the annual PUR fee, is established by a chartered surveyor. The outcome of the adjustment procedure can be contested in court.

- Unlike in the case of ownership of real estate, PUR is not subject to property tax.
- Upon the consent of, respectively, the State Treasury or municipality that granted a PUR, it is possible to transform the PUR into an ownership title.

2.3 Mortgage

A mortgage is an interest in real estate which serves as a security with regard to any liabilities incurred by an owner of such real estate or any third party (in such case the owner should consent to the grant of the mortgage securing such third party's liabilities) or as a means of enforcement against the owner. The mortgagee, i.e. the party in favour of whom a mortgage has been granted, upon obtaining an enforcement title, has a right to have the mortgaged property sold in a public auction. Mortgages do not limit the owner's rights with regard to the mortgaged real property, including the right to dispose of it; on the other hand the interest of the mortgagee remains notwithstanding any transfers of the property, as the mortgage is separate from the debt it secures.

A mortgage can be established through a grant by the owner, as well as by a court order or by an administrative decision (e.g. by tax authorities). For a mortgage to be effective, registration in the Land and Mortgage Register is required. The registration takes effect at the date of filing the relevant application. However, the period between filing and registration can take up to several months, so in the case of any mention of a pending registration request an additional check of the register files is recommended.

The following types of mortgages are provided for under Polish law:

- Ordinary mortgage, established when a precise amount of the secured or enforced claim is known;
- Capped mortgage, when a claim is secured or enforced up to a certain amount, e.g. in the case it secures a bank loan together with interest and possible costs;
- Forcible mortgage (which can be either ordinary or capped), which is established on the basis of a court or administrative decision (though technically speaking the interest in the property arises upon registration of the mortgage in the Real Estate and Mortgage Register, with effect at the date of filing the application);
- Joint mortgage under which more than one property is encumbered;
- Mortgage imposed on another mortgage.

2.4 Usufruct

Real estate can be encumbered with usufruct, which provides the holder with a right to use and collect profits but otherwise does not affect the ownership title. Usufruct is non transferable, which means that the owner has control over who is entitled to use his property as an usufruct holder.

Usufruct can be limited to a specific part of a given piece of real estate.

2.5 Servitude

There are land servitudes and personal servitudes, both of them consisting in an encumbrance imposed on a property for the benefit of, respectively, another property (in practice: that property's holder) or a specific person.

A property encumbered with a servitude is referred to as the servient property, whereas another property in favour of which the servitude is granted, is referred to as the dominant property.

Land servitudes are attached to the property, whether dominant or servient, and the transfer of ownership title to the property does not affect the servitude rights. However, the servient property and the dominant property must have different owners, otherwise the servitude expires by law.

Personal servitudes are attached to the servient property and the person in favour of whom they have been granted – they are non transferable and are not subject to inheritance.

Land servitudes may either:

- confer on the owner of the dominant property the right to use, in a certain defined manner, the servient property – a typical example of such servitude is the right of way, conferred in order to gain access to the dominant property;
- restrict the owner of the servient property in their rights, e.g. with regard to the space which the owner of the servient property should leave undeveloped.

Servitudes should be recorded in the Land and Mortgage Register; however, there are situations when they are established without registration. An example of such situation is the case of usucaption, i.e. when the mere fact of the actual exercise of a servitude for – depending on the good or bad faith – 20 or 30 years results in the establishment of a right in that regard that is opposable to the owner of the servient property. Therefore, in the case of a due diligence investigation preceding a purchase of real property, apart from a standard check of the Land and Mortgage Register an on-site inspection is recommended.

2.6 Utility servitude

An utility servitude can be established to the benefit of utility providers and ensures their right to use the servient property in a manner justified by the proper operation, maintenance and monitoring of the relevant utility infrastructure and connections installed on the servient property. It may be established in particular for the providers of gas and electricity, including wind farm operators.

From a legal point of view, it is neither a land servitude nor a personal servitude. It differs from a land servitude, because it may be imposed for the benefit of a business entity which does not own any property; it is sufficient that such entity is planning to build or owns relevant infrastructure. It differs from a personal servitude, because it is not attached to the entity to whom it has been granted, but it transfers to the buyer of the enterprise of the utility provider or of individual elements of the enterprise. A utility servitude expires upon the liquidation of the enterprise of the utility provider.

The servitude is established by contract. In the event the land owner refuses to conclude such a contract, the utility provider may apply to a court for the establishment of a specific utility servitude.

3. Leases

As with all contracts, leases benefit from the principle of the freedom of contract, which ensures a large degree of flexibility for shaping the rights and obligations of the parties. However, with Polish law being a codified system, leases are governed by certain statutory provisions which in some cases cannot be escaped. Therefore, any attempts at the implementation in Poland of foreign lease agreements should be made carefully, with special attention focused on issues subject to binding provisions of law. Depending on the kind of property leased, the extent of statutory regulation will vary. With regard to lease agreements there are three layers of regulation:

- general provisions relating to all kinds of lease and tenancy agreements;
- additional specific provisions reserved for the lease of premises;
- a special statutory act regarding the lease of premises for residential purposes.

3.1 General rules governing lease agreements

A lease of a property provides a contractual right to use it for a definite or indefinite period of time in return for rent. As opposed to the property rights set out in section 2, a lease ensures an interest with regard to the possession and does not convey any real title to the property.

Under Polish law there are two types of lease agreements, which are usually differentiated in English by the use of the terms 'lease' with regard to *umowa najmu* and 'tenancy' in respect of *umowa dzierżawy*. Following this terminology, the main difference between the two agreements is that a lease provides for the sheer use of real estate, whereas under a tenancy the lessee may additionally collect benefits, though in practice the line between them has been blurred.

The Civil Code contains (i) provisions which apply only to those issues which have not been otherwise regulated in a contract and (ii) mandatory provisions which cannot be modified by contract. It should be emphasised that in respect of some provisions it

remains debatable among lawyers whether they are mandatory or if they can be modified by contract. The most important issues, which are subject to statutory rules are as follows:

- **Maximum fixed term of contract:** the maximum fixed term is 30 years for lease contracts between business entities and 10 years in non-business relationships; after the lapse of the maximum fixed-term period, the lease transforms into an indefinite-term lease (unless a new fixed-term lease is executed following the termination of the previous agreement).
- **Termination of a fixed-term contract:** other than in the event of a breach of contract, it is possible to terminate a fixed-term contract only when the parties expressly provide for such an option in the contract, setting out precise circumstances when it is possible; this makes for a substantial difference between fixed-term and indefinite-term contracts – in the latter case a lease can be terminated by notice by either party, without stating any particular reason.
- **Maintenance and repairs:** by law, the lessee is responsible for minor repairs, whereas the lessor should maintain the property in a condition suitable for the use for which the property has been leased out; these rules can be modified by contract to a certain extent; however the division of duties between the two parties to the contract cannot be abolished completely.
- **Assignment:** in the event of the transfer of property, the new owner automatically becomes a party to all lease agreements. However, the new owner may terminate all indefinite-term agreements as well as those fixed-term agreements which do not bear a notarially-certified date or cannot be otherwise confirmed by a public authority (another condition is that the property has actually been delivered to the lessee).
- **Pledge on movables:** as a guarantee of the payment of rent overdue for up to one year, the lessor has the statutory right of pledge on movables brought to the property; such pledge expires when they are removed from the property. The lessor may object to such removal unless they are subject to seizure; however in such a case the pledge persists if the lessor notifies its rights to the authority performing the seizure.
- **Eviction:** in accordance with general enforcement rules, an eviction is possible only on the basis of an enforceable court decision and should be performed by a court bailiff.

Most issues which have not been mentioned above can be settled by the parties in a relatively flexible way, though it should always be borne in mind that due to some statutory provisions certain contractual clauses can prove to be invalid.

3.2 Lease of premises for non-residential purposes

The Civil Code contains specific rules applying to the lease of premises. These rules apply to the lease of all kinds of premises; however they are further modified by the Protection

of Tenants' Rights Act, which applies to the lease of residential premises (cf. later in this section). Below we set out some of the specific rules relating only to the lease of premises for non-residential purposes.

Unlike under general provisions regarding lease agreements, in the event of defaults in payments of rent concerning premises, for at least two entire periods for which rent is payable, termination is possible upon a written communication notifying the intention to terminate the agreement. Also, such lease can be terminated without notice if the lessee blatantly or stubbornly breaches the residential rules or if the lessee's inappropriate behaviour hinders the use of other premises.

In the case of the lease of premises for an indefinite period of time where rent is paid monthly, the lease can be terminated upon a 3-month notice, with effect at the end of the month.

A special provision relating to the lease of premises makes possible the raising of the rent – upon one month's notice, with effect at the end of the month. Other than terminating the lease, the lessee can fight in court if he finds the increase of the rent unreasonable; however, he may only rely on general provisions of the Civil Code, which do not contain any specific rules in that regard.

3.3 Lease of premises for residential purposes

The act governing leases for residential purposes, which is commonly referred to as the Protection of Tenants' Rights Act, sets out provisions defining the rights and obligations of the lessor and the lessee in a much more detailed manner than the legislation relevant for other types of lease agreement. The act applies only to the lease of premises used for residential purposes by an individual and not in cases of, for example, the lease of an entire building to an entity which on its part subleases apartments for residential purposes. Lease of premises for residential purposes is additionally subject to the provisions of the Civil Code. Unless explicitly stated in law that a given provision can be modified by contract, provisions of the Civil Code and the Protection of Tenants' Rights Act (the same as any other statutory provisions) are mandatory and the parties cannot exclude their application.

As with all other lease agreements, a lease for residential purposes can be executed for a fixed or indefinite period of time.

Perhaps the most important deviation from the 'ordinary' provisions regarding lease agreements is the question of termination of the lease. In the case of a lease for an indefinite period of time (the relevant provision emphasises the fact that it concerns a 'paid' lease), generally an agreement can be terminated only when the lessor requires the premises for its own residential needs, i.e. when the lessor wishes to occupy the premises himself. Depending on whether or not the lessee has a right to other premises where he can 'live in similar conditions' (or when the lessor provides other premises to the lessee in

return for the terminated lease), the termination notice is 6 months or 3 years. However, in the case of lessees who at the time of notification of the termination notice are over 75 years of age and have neither a right to other premises where they could live nor any relatives having a legal obligation to ensure housing, the termination takes effect only upon the lessee's death.

Otherwise, the lessor can terminate the lease of residential premises only when the lessee:

- in spite of a written warning, continues to use the premises in a manner contradictory to the agreement or the purpose of the premises, does not perform his obligations thus allowing damage to arise, or destroys facilities designated for common use by the residents, or blatantly or stubbornly breaches the residential rules by disrupting the use of other premises, or
- is in default with payment of rent or other fees with regard to the use of the premises for at least three entire periods for which they are payable, despite a written communication notifying the intention to terminate the agreement and indicating an additional monthly term to make overdue and current payments, or
- has subleased or granted for a gratuitous use the premises or their part, without the due consent of the owner, or
- uses premises that need to be evacuated owing to the need to demolish or repair the building (however, following the repairs, the lessee should be allowed to return to the original premises).

The Protection of Tenants' Rights Act contains additional rules regarding the increase of the rent. In accordance with these rules, rent can generally be raised upon notice (where the minimum notice allowed by law is 3 months) and not more frequently than every 6 months. The amount of the new rent is limited by specific rules and if in the lessee's view the increase is not justified, he can challenge the increase in court or terminate the lease. If the court finds the increase justified, using the criteria stipulated by law, the amount of the rent approved by the court is payable with effect from the notification of the new rent.

The Protection of Tenants' Rights Act has been by far the most frequently amended piece of legislation relevant for lease agreements, and therefore in the case of every residential lease the provisions governing it should always be double-checked.

4. Real estate registration

4.1 Land and Mortgage Register

The Land and Mortgage Register is the main source of information concerning the legal status of the real estate entered therein. Under Polish law it is presumed that the entries made in the register are correct. Since the register is publicly accessible, nobody can claim

that they did not know the legal status of a given property. On the other hand, the party acquiring the real estate is protected by a statutory warranty ensuring that the information regarding the legal title entered in the register is correct. However, the warranty does not protect acquirers acting in bad faith or those who acquired the property against no consideration. Furthermore, the warranty does not extend with regard to certain servitudes or the right of life estate, which means that such rights can work against the acquirer even when they have not been recorded in the register.

With the on-going process of the transfer of data kept by District Courts to the national electronic register, most properties can now be checked at Land Register Information Centre outlets. If the property is entered in the electronic register, an extract of the file concerning the property can be obtained on the day of the request. If the documentation exists only in hard copies, the processing of the request usually takes about seven days.

It is compulsory to enter a property in the register upon any transaction involving the transfer of title; however there are still some properties which were not subject to any transaction for a very long time and for this reason have never been entered in the register.

The Land and Mortgage Register is divided into four sections comprising:

- first section - designation of the property (i.e. plot numbers, area), as well as rights attached to that property, e.g. servitudes enjoyed by the dominant property
- second section - legal title to the property (ownership or perpetual usufruct)
- third section - limited property rights (encumbrances other than mortgages) and personal rights and claims regarding the property, e.g. leases, pre-emption rights
- fourth section – mortgages

4.2 Land and buildings register

A land and buildings register is kept by municipalities for the purposes of spatial planning, designation of properties in the Land and Mortgage Register, and for statistical and tax purposes. From the point of view of investors, the records of the land and buildings register are particularly important when a given property is not covered by a zoning (master) plan. In such a case the records of the land and buildings register would be decisive for the question as to whether or not the property is qualified as farmland – if it is, certain restrictions would apply in the case of the transfer of such property.

The records of the land and buildings register do not provide any kind of warranty as to the accuracy of the data, as is the case with the Land and Mortgage Register.

5. Transfer of real estate

5.1 Methods of transfer

From a legal point of view, the transfer of real estate can take place in various ways, however the most common business transactions involving real estate consist in:

- sale of real estate
- transfer of real estate to a legal entity as an in-kind contribution
- sale of shares in a company owning real estate (share deal)

The choice between the above solutions may depend on business or legal factors. The legal aspects to be taken into consideration include:

- an extended liability arising under a share deal (e.g. in respect of third-party claims or tax liabilities of the company acquired)
- statutory warranty of good title to the property existing in the case of an asset deal, but not in the case of a share deal
- transfer of property-related rights, obligations and administrative decisions, which takes place 'automatically' in the case of a share deal, whereas under an asset deal assignments of particular rights and obligations are needed, and most administrative decisions require new proceedings to be conducted on behalf of the new property owner
- tax implications, which differ with regard to issues such as the applicability of VAT or stamp duty, depreciation, and taxability of income in the course of the investment process and at the exit; indeed, the tax implications should be at the core of every investment planning process.

5.2 Legal rules governing the transfer

For the transfer of real estate, an unconditional transfer agreement made before a notary public is required. The registration of the ownership title in the Land and Mortgage Register is required by law; however it is not necessary for the transfer to take effect. On the other hand, the transfer of the perpetual usufruct right (PUR) or the establishment of ownership title to separate premises within a property take effect upon registration in the Land and Mortgage Register.

The transfer agreement itself must be unconditional; however, it can be preceded by other agreements stipulating the obligation to transfer the property in the future. Such preliminary agreements are common, as they make it possible to define conditions precedent to closing (please cf. the section below regarding the types of agreements).

Upon the fulfilment of the conditions precedent, the parties need to execute a definitive transfer agreement.

In the case of an asset deal, a deed drawn up by a notary public is necessary. By contrast, in the case of a sale of shares in a company holding real estate, the role of the notary public is limited to the authentication of signatures under the share sale agreement. Unlike a notarial deed, which needs to be drawn up in Polish, a share sale agreement can be drafted in any language.

5.3 Special rules: agricultural land and the sale of real estate by the public authorities

Generally, real estate owned by the State or by the local authorities can be sold only in a public tender, which may take place as an auction or by way of written bids. In the course of the tender procedure the provisions relevant for tenders regarding public real estate must be observed. The main purpose of these provisions is to make the whole tender process public and render the procedure transparent. In certain circumstances, a tender can be avoided; however, even then the sale of the real estate should be publicly announced.

As far as most agricultural land is concerned, if it is to be sold, there is a statutory pre-emption right which can be exercised by that land's lessee or – if there is none – by the Agricultural Land Agency. The pre-emption right does not only apply to transactions with buyers having a specific status, e.g. members of the seller's family or farmers wishing to extend their estate within the limit of 300 hectares. Therefore, most transactions have to be structured by law in two stages, the first stage being the execution of a conditional agreement and the second – a final agreement transferring the ownership title, which can take place upon the waiver of the pre-emption right or the expiry of the one-month term to exercise the pre-emption right.

Additionally, certain restrictions are imposed on foreigners intending to acquire agricultural land – please cf. section 6 re. acquisition of real estate by foreigners.

There are no restrictions with regard to the area of agricultural land purchased from private owners. However, state-owned real estate cannot be sold to an acquirer whose farmland would exceed – as a result of such transaction – 500 ha.

5.4 Types of agreements

As explained earlier in the section regarding legal rules, real estate can be transferred only on the basis of an unconditional agreement, which means that a single deed is sufficient for the transfer. However, for business or legal reasons, such transactions are often made in two or three stages, involving the execution of a letter of intent, then a preliminary or conditional agreement and finally, an agreement transferring the title to the property.

Letter of intent

Documents signed at an early stage of negotiations of a real estate transaction, such as a letter of intent, memorandum of understanding, heads of terms, etc., are not required by law; however they may be useful to provide for exclusivity of negotiations and ensure confidentiality. Generally, other than regulating the terms of the negotiation process itself, they do not create any contractual obligations.

Preliminary and conditional agreements

The following situations may justify the need for a preliminary or conditional agreement, before an actual transfer of property takes place:

- The parties intend to subject the transfer of real estate to a positive verification of certain circumstances (e.g. in the course of a due diligence investigation) or the fulfilment of certain conditions, such as the issue of certain administrative decisions (e.g. a building permit), conclusion of court or administrative proceedings regarding the property, etc.
- A preliminary agreement is required by a bank, as a document necessary to complete the loan granting process.
- A pre-emption right exists in favour of a third party. The most common situation is the statutory pre-emption right in favour of the Agricultural Land Agency concerning agricultural real estate – in such case, unless the acquirer meets certain specific criteria, the transfer of the title to the property can only take place if the Agency does not exercise its pre-emption right. Therefore, any transaction involving the transfer of real estate with pre-emption rights attached must be split in two stages: a conditional agreement and a final transfer agreement, which can be made following the expiry of a fixed term to exercise the pre-emption right or a declaration on the waiver of the pre-emption right.
- A permit to acquire real estate is required, e.g. in the case of foreign buyers who do not qualify for any exemption;
- Merger control, when the transfer of real estate occurs as part of a major transaction such as a merger or company acquisition, when a clearance from the President of the Protection of Competition and Consumers Office is required.

If the preliminary agreement is made in the form required for the definitive transfer agreement (i.e. in the case of an asset deal - a notarial deed and in the case of a share sale agreement – with signatures authenticated by a notary public) and one of the parties fails to sign the transfer agreement, despite the fulfilment or waiver of the conditions precedent, the other party can claim the transfer of real estate before a court. A court decision would substitute the seller's representation and would be sufficient for the sale agreement to take effect. Furthermore, in the case of an asset deal, a preliminary agreement can be recorded in the Land and Mortgage Register. According to court

jurisprudence, if the seller transfers the property in breach of a preliminary agreement which has been recorded in the register, the buyer can demand that the new owner transfer the property on the terms of the preliminary agreement.

6. Acquisition of real estate by foreigners

As a general rule, foreigners (i.e. both individuals and entities) willing to purchase real estate in Poland need to obtain a permit from the Minister of Home Affairs. However, with Poland's accession to the European Union, most restrictions concerning the purchase of real estate have been lifted for citizens and companies having residence or incorporated in one of the member states of the European Economic Area (the EEA, which includes all the EU countries and additionally Norway, Iceland and Liechtenstein) and Switzerland. Therefore, currently a dual system is in force: one set of rules applies to the EEA as well as Swiss citizens and entities, and a different one relates to all the others. However, it is important to emphasise that for any investor from outside of the EEA or Switzerland it is relatively easy to 'change the status' by incorporation of a company in any of the 'privileged' countries, including in Poland.

6.1 Non-EEA and non-Swiss investors

Generally, investors from outside of the EEA or Switzerland need to obtain a permit prior to the acquisition of real estate or shares which give control of a company holding real estate of a perpetual usufruct of real estate. The exceptions to this rule are:

- purchase of an apartment or garage;
- purchase of up to 0.4 ha of undeveloped land within the territory of cities;
- other cases provided for by law (generally: particularly close connections with Poland).

The permit is issued by the Minister of Home Affairs upon fulfilment of the following conditions:

- ✓ the acquisition does not constitute a threat to state defence, safety or public order, nor does it contravene social or health policies,
- ✓ the foreigner can prove his/her connection with Poland.

Acquisition of real estate by a foreigner in breach of the statutory requirements is null and void.

6.2 EEA or Swiss investors

Acquisition of real estate by citizens and entities from the EEA member-states or from Switzerland does not require any permit, except for the acquisition of agricultural or forest land. However, agricultural or forest land can be purchased without a permit by tenants from the EEA and Switzerland who have used the land on the basis of tenancy agreements

(*umowa dzierżawy*) for at least three or seven years, depending on the location of the land, provided that the tenants meet certain additional conditions. The restriction regarding agricultural and forest land is valid only for 12 years from Poland’s accession to the European Union and therefore applies only until 1 May 2016.

7. Basic tax considerations

7.1 Overview

The purchase of real estate involves the payment of stamp duty equal to 2% of the market value of the property. (Market value is usually equal to the purchase price payable by the buyer.) However, in case of a share deal, consisting in the purchase of shares in a company holding real estate, the stamp duty amounts to 1% of the value of the shares.

For the purposes of corporate income tax, buildings are subject to depreciation, generally on a straight-line basis at 2.5% per annum, though in certain situations the depreciation rates may be increased. Land cannot be depreciated.

The rules with respect to income tax payable on the sale of real estate are different for natural persons and legal entities. The rules depend on various factors, such as the time of the acquisition, expenditures incurred, depreciation etc.

Similarly, VAT rules differ substantially according to the status of the owner and the property concerned.

Ownership of real estate entails real property tax levied by the local tax authorities.

7.2 Real property tax

Real property tax is levied by the local tax authorities, so the rates can differ. The Law on Local Taxes and Charges provides for maximum rates, such as:

Type of property	Tax per square metre
Land properties destined for business purposes (except for NGOs)	PLN 0.62
Residential buildings or premises	PLN 0.51
Buildings or premises designated for business usage (there are separate categories for hospitals and seed depositories)	PLN 17.31
Facilities other than buildings (as defined by the Building Law, e.g. various items of technical infrastructure)	Tax rate of 2% on the value

Generally, in developing areas, exemption from real property tax may be granted by the local authorities.

* * *

If you seek advice regarding any legal aspects concerning real estate in Poland, you are welcome to contact the **authors of this paper**:

Adam Morawski, Managing Partner

Bożena Morawska, Partner

Contact details:

MORAWSKI & PARTNERS LAW FIRM
AL. JANA PAWŁA II 80/138
00-175 WARSZAWA
TEL. +48 22 250 11 22
E-MAIL: INFO@MORAWSKI.EU
WWW.MORAWSKI.EU

The information contained in this paper is correct to the best of our knowledge and belief at the time of being published; however, it does not constitute legal advice. Legal advice can only be provided by our lawyers in respect of a concrete question.