

Doing Business in Poland

REAL ESTATE
GUIDEBOOK FOR FOREIGNERS | 2022





Peter Nielsen & Partners Law Office (PNP Law) is a Polish law firm with Danish origin, located in Warsaw, the capital city of Poland. Since its establishment in 1990, it has gained market recognition as a reliable and efficient advisor.

During more than 30 years of our activity on the Polish market, we have introduced a significant number of foreign companies to Poland and we are still providing many of them with high quality business oriented legal services. Our team is helpful, each of us speaks English and enjoys working in a multicultural environment. We find practical solutions for our clients within many areas of legal practice.

PNP Law is a member of several renowned organisations, i.a. the Scandinavian-Polish Chamber of Commerce and the European legal network “Eurolegal”. Moreover, we actively participate in pro-bono organisations.

For more information, please, visit our website www.pnplaw.pl

Real estate law and construction law are among our main legal practises, therefore, PNP Law has prepared this brochure to provide foreign investors who consider entering the Polish market with basic information on Polish regulations within this scope.

Peter Nielsen & Partners Law Office

Atrium Centrum, Lobby B
Al. Jana Pawła II 27
00-867 Warszawa, Poland

phone: +48 22 59 29 000
e-mail: office@pnplaw.pl
www.pnplaw.pl



The Polish Real Estate Federation (Polska Federacja Rynku Nieruchomości) is Poland’s largest professional organization associating Real Estate Agents and Property Managers. Currently, the Polish Real Estate Federation works on behalf and in the interest of 17 regional real estate agent associations as well as property managers, affiliating nearly 2,000 persons. The objective of the Polish Real Estate Federation is to unite all real estate professionals and ensure the proper development of the Polish real estate market by providing services at the highest level and formulating clear business profession principles.

Polska Federacja Rynku Nieruchomości

Plac Grzybowski 10/31
00-104 Warszawa, Poland

phone: +48 22 654 58 69
e-mail: federacja@pfrn.pl
www.pfrn.pl
www.rejestr.pfrn.pl



For over a decade of operation, the company **AXI IMMO** has become a significant force on Poland’s real estate market. It advised over 500 clients and assisted in more than 900 transactions. Today, the company is a team of 60 specialists, earning an ever greater market share in Poland every year.

AXI IMMO is known for its strong presence in the logistics and industrial sector, both in leasing and investment. At the same time, its range of services covers wider spectrum such as: leasing office space, asset and property management services, and advisory in land acquisition and disposal processes, reporting.

AXI IMMO concentrates on a long-term cooperation with the clients. More than 60% of them have been working with the agency for many years. AXI IMMO delivers market insights

and knowledge in every business situation. AXI IMMO is the local agency with the biggest market share in Poland, at the same time being a member of international real estate organizations including Gerald EVE, SIOR and IRELS, allows to advise clients with their cross-border portfolios on the international level.

AXI IMMO Group

Spektrum Tower
ul. Twarda 18
00-105 Warszawa, Poland

phone: +48 22 111 000 1
e-mail: office@axiimmo.com
www.axiimmo.com



Dear All,

It has been two years since the world started to struggle with the COVID-19 pandemic, which has significantly hit the global economy and has greatly affected our everyday life. We have all experienced lockdowns, border restrictions, hybrid work and other restrictions resulting from the

epidemic situation. But at this time, it is noticeable that both economies and societies worldwide have started to adopt to this new situation and the economic outlook becomes more and more optimistic. In its recent report entitled Competition and Firm Recovery Post-COVID-19, Europe and Central Asia Economic Update, which was published at the beginning of October 2021, the World Bank indicates that the diversified economy of Poland is highly resistant to the threats resulting from the pandemic and has been quick to re-enter the growth path.

The Polish Real Estate Federation, AXI IMMO and PNP Law which has a vast experience in real estate and construction law, have prepared this brochure for foreign investors who are looking for opportunities to invest in the Polish real estate market.

In its interesting review, AXI IMMO presents the analysis of current trends in the real estate market in Poland and forecasts the future development of this segment of the Polish market.

PNP Law presents an outlook on Polish real estate legal regulations that could be helpful if you plan to enter the Polish real estate market.

In search of new investment opportunities in 2022, we encourage investors to look at the real estate market in Poland, which, despite the threats resulting from the pandemic, is still steadily developing. You are welcome to contact PNP Law and our partners: the Polish Real Estate Federation and AXI IMMO when planning investment in the Polish real estate market.

Mirosław Bik, partner in PNP Law
editor of "Doing Business in Poland – Real Estate"



DISCLAIMER

This brief presentation is aimed at providing foreign investors with basic information related to Polish regulations concerning the real estate and construction law. For further information, please visit our website at www.pnplaw.pl and contact our lawyers.

“Doing business in Poland – Real Estate” takes into consideration legal regulations as at 1 October 2021.

This document is for information purposes only and it may not be considered as legal advice on any matter. We have carefully examined all issues to ensure that the information contained herein is credible and up-to-date. However, we do not guarantee the correctness and validity of the material and we are not responsible for any errors or omissions or for any consequences of using the information. Prior to making any decision or taking any action, you should consult your lawyer.

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I. GEOMETRY OF REAL ESTATE MARKET IN POLAND BY AXI IMMO



Renata Osiecka, Managing Partner, AXI IMMO

At the turn of 2020 and 2021, the real estate market in Poland went through a number of transformations which have re-established its hierarchy. From a time perspective, the COVID-19 pandemic should be considered as a milestone for most markets or perceived as a strong stimulus for their development. The pandemic has changed the traditional way we think about the real estate market and its pillars, i.e. office, retail and warehouse sectors. So far, the main drivers were shared between retail and office markets. The greatest investment transactions were related to this type of assets and international investment funds gladly visited Poland in order to build investment portfolios on the basis of properties available here, and often decided to purchase individual objects. At that time, the warehouse sector did not attract that much attention due to lower understanding of the market, shorter lease contracts and specificity of the sector, which considered warehouse assets as not technically advanced. The hotel sector was somehow developing in the shadow of these three. However, comparing the number of transactions and, above all, the volume of available products, i.e. the total warehouse space vs. the number of available hotels, it could turn out that it was another race for the third and fourth places, just after the office and retail sectors. For the hotel sector, the key factors for development were represented by the leisure offers, as well as business, through the booming MICE industry (Meeting, Incentive, Conferences, Exhibitions). At the other end of the spectrum was the housing market, which was mainly dominated by the private sector, and a significant market fragmentation. About a year before the outbreak of the pandemic, large investment funds, due to the growing or constant trend in the west, which consisted in investing in senior housing, private dormitories or apartments for rent, began to look increasingly boldly for similar products in Poland.

Pandemic and diversification of investment products in Poland

As it was at the turn of 2008 and 2009, also now, during the COVID-19 pandemic, no economy and, subsequently, no commercial sector has been prepared for such a huge test related to the global crisis management. Obviously, over the years, many companies have faced major or minor crises, e.g. PR, however not to so many entities at the same time. Over time and after taking appropriate steps, the commercial market has undergone through the process of changes, providing some sectors with additional fuel for development.

Warehouse market

The warehouse sector is seen as the main winner of the pandemic period. Currently, it's experiencing the hottest period in its history in Poland. We observe a record interest of international investors in allocating their capital to this segment. The results of both the supply and demand reveal its huge potential and development facilities. What is more, for many years Poland has been a kind of vestibule for international companies considering their expansion in Europe. The scale of this phenomenon may be quickly tracked on the basis of increasing transaction volumes each year. The development of e-commerce and all industries supporting this segment is also of great significance. In addition, phenomena such as cross-border or nearshoring heighten the role of Poland as an important destination in Europe. International companies are attracted by favourable conditions for business development, such as tax allowances, experienced and qualified staff, constantly expanded and improved road infrastructure, and, above all, Poland's location on the map as well as its EU membership. Poland also has one of the youngest warehouse markets compared to other countries in Europe, which is constantly growing due to the increasing activity of developers. However, in a medium- and long-term perspective, we expect an increase in asking rental rates, which have been frozen for some time during the pandemic. Moreover, a large share of companies from the e-commerce and logistics segments will affect the type of space delivered. Shortening the delivery time will increase the demand for properties in the urban logistics segment as well as the range of available investment assets on this market.

Warsaw and its suburbs remain the largest and the most mature warehouse market in Poland. The next places are taken by: Upper Silesia, Central Poland, Poznań and Lower Silesia. The development of smaller warehouse markets such as Tri-city (access to the container port and intermodal transport) and Western Poland (proximity to the border with Germany) should be observed with great attention, as there has been a rise in demand in recent months. In turn, the importance of the Eastern Poland will gradually increase with each delivered kilometre of two transcontinental routes, i.e. Via Carpathia (a corridor connecting Lithuania, Poland, Slovakia, Hungary, Romania, Bulgaria and Greece)

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and Via Baltica (the most important road connection between the Baltic countries, i.e. Poland, Lithuania, Latvia and Estonia), which will create new opportunities for expansion of warehouse space in Poland.

Office market

The Polish office market is the second branch of the real estate sector which has dealt with the pandemic crisis quite quickly. Among the key trends are the transformation of the way of work, and, above all, of workplaces, which prompted many tenants to redefine their needs concerning the size of the office and the way it is arranged. Ensuring safety as well as introducing further technological solutions turned out to be equally important. As a result of the pandemic, we have noticed slightly lower activity of developers and also a slowdown in demand. Tenants' strategy was mostly based on new contracts and re-negotiations. Currently, the condition of and atmosphere on the office space market in Poland, i.e. in Warsaw and eight main regional markets (Kraków, Wrocław, Tri-city, Poznań, Łódź, Katowice, Lublin, and Szczecin) look promising and give further signs of booming market, which should be visible in the first months of 2022. The demand growing from quarter to quarter indicates that tenants, after introducing the hybrid model of work, look for opportunities for employees to return to their offices. An even larger transformation of the workplace itself will be the trend which may become more visible in the coming months. Owners of slightly older or less attractive office buildings will look for ways to change their status or available offer. We expect the commencement of the space modernisation process and space fit out to a higher standard, often with more individualised solutions. It may be a good idea to create incentives to join a community or indicate a certain kind of uniqueness.

As on the warehouse market, Warsaw remains the leader in terms of the total office space resources with a business zone located near Rondo Daszyńskiego which stands out from the rest of the country. This region is dominated by modern office towers perfectly connected with the entire capital city. Moreover, Warsaw has an alternative business area located in Mokotów-Służew district, which has started to change its structure from an office monoculture to a place for work and leisure in the last 3-5 years.

Among regional cities, Kraków, Wrocław, Tri-city or Poznań should be taken into account. For years, these cities have been dynamically developing through offering modern services for business to foreign entities. This group includes tenants from the following sectors: business process outsourcing (BPO), shared services centre (SSC), information technology outsourcing (ITO), and research and development (R&D). Apart from a qualified staff, every year, Poland ensures a large number of new graduates from many universities training at an international level.

Retail market

The Polish retail market went through a transformation even before the pandemic. At that time, the regulations prohibiting the operation of shopping facilities on Sundays, apart from designated Sundays when shopping is permitted, were of great importance. The said act effectively reduced the turnover. The second phenomenon was the change of a traditional format of facilities slowly departing from the model strictly rooted in trade in favour of extensive leisure and entertainment zones. For this reason, many owners of shopping centres, when deciding on modernisation, extended or supplemented their offer with a food court. Also, the development of the e-commerce segment, which assumed the limitation of a stationary form of trade in favour of on-line shopping, had a significant impact on the entire sector. The future of the segment was seen mainly through the development of such services as m-commerce, that is shopping via mobile devices. Currently, traditional shopping centres return to opening shops and working to the fullest extent. During the pandemic, investors noticed that the format which handled much better with the crisis was represented by retail parks and shopping centres in cities with less than 100,000 inhabitants. This fact is explained by a low saturation of shopping facilities in small and medium-sized cities and also by frequently a greater availability of land. Outlet centres, which have a good list of tenants and were often visited by customers during the pandemic, may also be an interesting product for potential investors. In addition, the development of dark stores is observed on the Polish market. They offer the delivery of the most necessary products within 15 minutes from placing the order.

Hotel market

The hotel sector, after the longest and most difficult lockdown in the history of the entire commercial real estate market, is finally out of the woods. The last few months have given further positive signals of a return to normality. Appropriate procedures and a significant increase in the number of vaccinated persons contributing to the increase in accommodation capacities constitute a significant indicator regulating the number of visitors. The hotel industry, with every loosening of pandemic restrictions, adjusted its offer in order to ensure the highest level of services for guests and to make up for losses incurred during lockdown, in the shortest possible time. Furthermore, maintaining appropriate health and safety standards allows the MICE industry to return to organising conferences and events on a larger scale. In addition, we expect that along with the increasing number of vaccinated people, hotels located in tourist destinations should observe the rebound. At the same time, the fatigue of videoconferences and the willingness to return to live business meetings should also be taken into account. The MICE segment may also effectively attract hotel guests and increase their operational activities.

Institutional tenancy

Institutional tenancy is a relatively new product on the Polish real estate market, which mainly pertains to the largest cities. So far, the structure of this sector has been based on a significant fragmentation, especially among private investors. It was also difficult to specify one standard for this asset class. Poland is a very good destination for international students who are interested in learning at prestigious universities. We

expect that the number of students will grow annually. Due to this fact, investment funds may be interested in allocating part of their capital to this sector. Moreover, due to the average prices per square meter of a flat, which have been galloping for several years, some purchasers cannot afford them. However, despite the introduction of new social programmes in Poland, no demographic boom is observed. Because of that, there is a smaller rotation of flats, and families remain in current flats. The solution is for investment funds to standardise the institutional tenancy sector and introduce a new offer to the market.

Green revolution

During the pandemic, many initiatives related to the environment have been introduced. The future of the real estate sector is related to the growing awareness in terms of occupational safety and health. Tenants tend to decide to relocate to facilities with environmental certificates, such as BREEAM and LEED. We expect that in the years to come, the narration on the real estate market will be focused on ecology and sustainable development. It is also a new trend to implement the ESG practices, namely increasing of the awareness in terms of factors concerning Environmental, Social, and Corporate Governance changes. In the upcoming years, investors may be interested in building real estate portfolios taking into account only projects which meet the ESG strategy. Neglecting the aspect related to the development or modernisation of real estate in line with sustainable construction principles will cause the underinvested projects to be deemed less modern and valuable. ESG accreditation from an optional parameter will become a basic requirement and an important factor in attracting tenants or an additional source of financing, e.g. a loan for investors and developers.



II. TYPES OF RIGHTS TO HOLD REAL ESTATES

Real estates in Poland may be primarily held through ownership or perpetual usufruct rights. However, it is also common that real estates are enjoyed under a tenancy or lease contract. Other rights to a real estate, like usufruct or free-of-charge lending of a real estate for use, are less common in Poland, in particular free-of-charge lending of a real estate for use is not recommended for business relations.

1. Ownership

An ownership right [in Polish: *własność*] in Poland is regulated by the Civil Code and it refers both to movables and real estates.

Generally, the ownership of a real estate entitles an owner to unlimited use and possession of the real estate. An owner may sell the land, exchange it, or donate it to another entity (with certain restrictions regarding agricultural land, cf. section III.3 below). A real estate may be a subject-matter of a mortgage, whereas an ownership right to a real estate is subject to inheritance.

There are three basic categories of real estates that may be held through an ownership right:

- ❖ plot of land,
- ❖ separate ownership of buildings,
- ❖ separate ownership of apartments.

In general, any building or installation developed on a plot of land becomes automatically a part of the real estate, and therefore belongs to the owner of the plot. There are however two significant exceptions to this rule: separate ownership of buildings (in case of perpetual usufruct right, cf. section II.2) and separate ownership of apartments.

In a multi-apartment building, each apartment may be a subject-matter of a separate ownership right. In such case, each owner of a separate apartment automatically becomes a co-owner of common areas of the building (common staircases, lobbies, etc.) and of the plot of land, along with owners of other separate apartments.

It should be noted that ownership of land in Poland may be acquired as a result of usucaption. A possessor of a real estate acquires an ownership right if they have used the land in an owner-like manner uninterruptedly for 20 years (if they have been acting in good faith, i.e. they do not know and could not have known they are not a rightful owner) or for 30 years (if they have been acting in bad faith).

2. Perpetual usufruct

Real estates owned by the State Treasury or a local government unit may be let to a natural person or a legal person under perpetual usufruct [in Polish: *użytkowanie wieczyste*]. The State Treasury or a local government unit continues to be a formal owner of land, but the perpetual usufructuary possesses almost all the rights and privileges of a private owner. In



particular, perpetual usufructuaries may sell or donate their perpetual usufruct rights or encumber them with a mortgage. A perpetual usufruct right may also be inherited.

Any buildings or installations developed on a real estate let under perpetual usufruct are owned solely by the perpetual usufructuary.

Perpetual usufruct is usually established for 99 years, and only in special circumstances it may be established for shorter periods, no less than 40 years. Terms and conditions may be added to a perpetual usufruct contract, e.g. a condition that the perpetual usufructuary is obligated to construct a certain building or installation on the land.

A perpetual usufructuary is obligated to pay the owner of a real estate (i.e. either the State Treasury or a local government unit) an initial fee amounting to 15-25% of the land's market value when the perpetual usufruct is established, and an annual fee. The annual fee is calculated as a percentage of the land's market value, and depending on the purpose for which the land is used, the fee is between 0.3% and 3% of the land's market value. The annual fee may be from time to time adjusted according to the current value of the land.

Within the final 5 years before the end of the perpetual usufruct period, a perpetual usufructuary is entitled to request an extension of perpetual usufruct for another period from 40 to 99 years. The extension may be refused only due to an important public interest.

As of 1 January 2019, every perpetual usufruct right established for housing purposes was transformed into an ownership right. The transformation took place by virtue of law, so perpetual usufructuaries did not have to apply for it in any way. New owners have to pay an annual transformation fee for 20 years, which amounts to a previous perpetual usufruct fee. Alternatively, natural persons can pay an entire fee in a one-off payment and receive a significant reduction (which varies depending on a commune).

3. Tenancy

In case of tenancy [in Polish: *najem*] of a real estate, a landlord is obliged to allow a tenant to use the premises for a definite or indefinite period of time, and the tenant is obliged to pay an agreed rent.

A tenancy contract of a real estate or premises for a period longer than one year should be concluded in writing, otherwise it is considered to have been concluded for an indefinite period. Tenancy concluded for 10 years (in case of tenancy between entrepreneurs: 30 years) is considered to have been concluded for an indefinite period, after the lapse of an agreed defined period. In case of sale of a subject-matter of tenancy, a purchaser steps into rights and obligations of the seller, however the purchaser is entitled to terminate the contract within statutory termination periods.

If a period of tenancy has not been specified, both a landlord and tenant may terminate their tenancy contract while observing a contractual time limit for notice. If no termination time limit has been specified, statutory termination periods, which depend on payment terms, apply.

If a period of tenancy has been specified, both a landlord and tenant may terminate their tenancy contract by notice in the events provided for in the said contract.

There is also a separate form of tenancy of residential premises called institutional tenancy [in Polish: *najem instytucjonalny*]. Institutional tenancy may be used only by entrepreneurs whose scope of business activity is tenancy of residential premises. This type of a tenancy contract protects a landlord in a better way, allowing that the vacating of premises may be enforced in case of contract termination, without the need to provide social housing. The institutional tenancy contract may be concluded only for a definite period of time and it must be signed in writing, otherwise it is null and void. The institutional tenancy contract is accompanied with a tenant's statement made in the form of a notarial deed, whereby the tenant submits themselves to execution proceedings and undertakes to vacate and deliver the premises used under the institutional tenancy contract on the date specified in a request to vacate the premises.

4. Lease

Under a land lease [in Polish: *dzierżawa*] contract, a lessor is obliged to provide a lessee with a subject-matter of lease to use and collect profits, for a definite or indefinite period of time. Due to the factor of collecting profits, a lease contract is commonly used to lease agricultural land. Collecting profits is also a factor which determines a key difference between lease and tenancy.

A lessee should exercise their right in accordance with requirements of proper management and may not change the purpose of a leased object without lessor's consent. Lease concluded for a period of more than 30 years is considered to have been concluded for an indefinite period.

In case of a lease contract, the law provides that if, as a result of circumstances not attributable to the lessee, usual income from the subject of lease has significantly decreased, the lessee may request a reduction in the rent for a given period.

If conditions for rent payment have not been set forth in a contract, the rent is payable in arrears, on the date customarily accepted, and in the absence of such custom, semi-annually in arrears. In the absence of different provisions in a contract, lease of agricultural land may be terminated with a 1-year notice at the end of a lease year, and any other lease contract with a 6-month notice before the end of a lease year.

5. Usufruct

Real estates may be burdened with usufruct [in Polish: *użytkowanie*], which is a right to use and collect profits. It is the broadest proprietary right and, as such, the biggest burden on ownership of a real estate.

Usufruct is a specific entitlement and may be limited by exclusion of specific profits and, if established on a real estate, it may be limited to specific part(s) of the real estate. Usufruct is a non-transferrable right, and it may generally be established by way of a contract. This limited proprietary right may be established for a definite or indefinite period, either against remuneration or as a gratuitous benefit. Parties to usufruct may be natural persons or legal entities, including agricultural production cooperatives.



III. ACQUISITION OF REAL ESTATES



1. General description of the process of acquisition of real estates

Usually, a transaction is preceded by searching and shortlisting real estates. Regardless of the fact whether a real estate is an undeveloped plot of land, a warehouse, or an apartment in a city centre, it is recommended that the legal analysis of the real estate be performed prior to making a decision to purchase it. Such analysis should include verification of land and mortgage registers, the Land and Buildings Records, local zoning plan, as well as checking the contract whereby a previous owner has acquired the real estate. In certain cases, technical and environmental check of a real estate is necessary.

Preparation to a transaction should include a stage of collecting documents concerning a real estate. Some documents are publicly available, some may be provided by a seller. Excerpts from land and mortgage registers, the Land and Buildings Records, local zoning plan and documents of acquisition of a real estate by the seller should be delivered before the transaction.

In case of industrial real estates, the documentation may be quite extensive and include a wide variety of documents ranging from a confirmation of payment of the real estate tax to environmental matters.

Certain legal actions may be carried out before the purchase. The most typical one is conclusion of a preliminary sale contract. Such contract comprises a promise to conclude a sale contract. It should set forth the key provisions of the final contract and usually specifies a date until which the final contract should be concluded.

A preliminary contract is typically executed in writing or in the form of a notarial deed. In the latter case, a person who has concluded such contract may demand conclusion of the final contract before the court. Usually, such contract also includes collaterals, like a non-refundable advance payment, voluntary submission to execution proceedings. Furthermore,

a preliminary sale contract usually describes events in which the contract ceases to bind the parties, e.g. a negative decision of a bank with regard to granting a loan to pay the price of a real estate.

On the day the sale contract is to be concluded, the parties (or their legal representatives) should meet at a notarial office, as sale of an ownership right or a perpetual usufruct right to a real estate requires the form of a notarial deed, otherwise the transaction is invalid. Notarial deeds are a specific legal form of documenting legal transactions, and their aim is to secure such transactions to a maximum, as notarial deeds are executed by notaries who are qualified lawyers.

The sale contract may also be concluded by proxies of the parties, if the latter may not conclude the contract personally. However a power of attorney to sign the sale contract of a real estate must also be prepared in the form of a notarial deed.

The contents of a sale contract, apart from a detailed description of a real estate and its price, should reflect the arrangements of the parties, therefore the contents vary from case to case.

Finally, after signing the sale contract, the seller releases the real estate and relevant documentation. This is also the moment when the parties sign a hand-over record, and the real estate is officially in the hands of a new owner.

After the transaction is completed, the notary files a request for new owner's ownership right to the real estate to be entered into a relevant land and mortgage register.

2. Acquisition of real estates by foreigners

A foreigner acquiring an ownership right or a perpetual usufruct right to a real estate is required to obtain a permit from the Minister of Internal Affairs. The same is required from a foreigner who acquires or takes up shares in companies based in the territory of Poland that are owners or perpetual usufructuaries of real estates located in Poland.

At present, the limitations regarding acquisition of real estates do not apply in case of citizens or entrepreneurs from the European Economic Area states (i.e.: EU Member States, Norway, Iceland and Liechtenstein) and from Switzerland. Citizens and entrepreneurs of those countries are allowed to acquire real estates in Poland and shares in companies that are owners or perpetual usufructuaries of real estates in Poland, pursuant to legal rules similar to those applicable in case of acquisition of real estates by Polish citizens or companies.

Pursuant to the law, a foreigner is defined as:

- ❖ a natural person not possessing Polish citizenship,
- ❖ a legal person having its seat abroad,
- ❖ a partnership with its seat abroad, established by natural and/or legal persons described above in accordance with the law of a foreign country,
- ❖ a legal person or a partnership having its seat in Poland, controlled directly or indirectly by a foreigner(s).

In order to obtain the permit, a foreigner must submit a relevant application.

The Minister of Internal Affairs issues the permit upon a foreigner's application if the purchase of a real estate by the foreigner does not pose any risk to state defence, security or public order, and the foreigner proves that there are circumstances which confirm foreigner's relations with Poland.

The circumstances confirming foreigner's ties with Poland may include, in particular:

- ❖ Polish nationality or Polish origin,
- ❖ marriage with a Polish citizen,
- ❖ permanent or temporary residence permit,
- ❖ membership in a managing body of companies registered in Poland.

A permit is valid for two years from the issue date. A sale contract should be concluded and executed within that time limit.

Except for the general exemption related to citizens or entrepreneurs from the European Economic Area states, the law provides also for other exceptions from the obligation to obtain a permit, i.a.:

- ❖ purchase of residential premises,
- ❖ purchase of a real estate that will be joint marital property by a foreigner whose spouse is a Polish national and who has been residing in Poland for at least two years from issuance of a permanent residence permit,
- ❖ purchase of a real estate by a foreigner who has been residing in Poland for at least five years from issuance of a permanent residence permit,
- ❖ purchase of a real estate by a foreign bank, which is a mortgagee, after an ineffective auction under execution proceedings.

3. Acquisition of agricultural real estates

Polish regulations provide for specific restrictions on purchasing agricultural real estates. The restrictions relate to purchasing both ownership rights and perpetual usufruct rights to agricultural real estates. No restrictions apply only to small agricultural real estates with an area smaller than 0.3 ha or to real estates which serve as internal roads.

As a rule, only a full-time farmer may purchase an agricultural real estate.

A full-time farmer is understood as a natural person who is an owner, perpetual usufructuary, owner-like possessor or lessee of agricultural real estates with a total area of no more than 300 ha of arable land. In addition, a full-time farmer has to be appropriately qualified, reside for at least 5 years in the commune where one of the agricultural real estates being part of the agricultural farm is located, and personally run the farm during that time.

Apart from full-time farmers, agricultural real estates may also be purchased by i.a.: seller's close relatives, self-governmental units, the State Treasury, church legal persons, national parks for the purposes related to environmental protection, as well as persons and entities who become owners as a result of inheritance or specific bequest or restructuring proceedings within the financial recovery proceedings or by merger, demerger or transformation of a company.

In all other cases, a consent of the Director General of the National Centre for Support of Agriculture is required to purchase an agricultural real estate. The consent is issued at seller's request if all of the following conditions have been met:

- ❖ the seller demonstrates that there has been no possibility for the agricultural real estate to be bought by full-time farmers;
- ❖ the purchaser obligates themselves to carry out agricultural activity on the acquired estate;
- ❖ the purchase of the real estate does not cause an excessive concentration of arable land.

The consent may also be issued at a request of the purchaser who is a natural person intending to establish a family agricultural farm, who meets the requirements set forth in the law regarding individual farmers, and who will undertake to reside in the commune where one of the agricultural real estates is located.

It should be also noted that in case of transfer of shares in companies that are owners or perpetual usufructuaries of agricultural real estates exceeding 5 ha, the law provides also for limitations in the form of a pre-emption right for the State Treasury or a buy-out right in case of transfers other than sale of such shares.



IV. SOURCES OF INFORMATION ON REAL ESTATES

Official information on real estates in Poland can be found in several public registers and acts of local law. Legal status of land can be determined in the Land and Mortgage Registry. Information on the type of land, its exact size and specific physical data of a real estate (e.g. types of soil) can be found in the Land and Buildings Records. Purposes for which land can be used and conditions of its development are established by local government units and specified in local zoning plans.

1. Land and Mortgage Registry

The Land and Mortgage Registry [in Polish: *księgi wieczyste*, abbreviation: *KW*] is the main source of information on the legal status of real estates in Poland. The files of the Registry are kept by specialised departments of district courts.

The Land and Mortgage Registry is publically available and pursuant to the law, no person can claim ignorance of entries in the Registry. The Registry can be accessed online at the address: <https://ekw.ms.gov.pl/>. One can also review physical files of the real estate in court – however, this requires that a legal interest in accessing those files be shown to the court (e.g. an ownership right to land or a consent of a land owner for such examination).

Entries in each land and mortgage register are divided into four sections:

- ❖ Section one – designation of a real estate and entries of rights appurtenant to the real estate;
- ❖ Section two – ownership and perpetual usufruct;
- ❖ Section three – limited property rights, restrictions on disposal of the real estate, other rights and claims;
- ❖ Section four – mortgages.

It is legally assumed that an entry in a land and mortgage register is correct unless proven otherwise, and therefore an excerpt from a land and mortgage register constitutes a legal proof of facts indicated in it.

Pursuant to the Polish law, the Land and Mortgage Registry enjoys a public credibility warranty. This means that any person who concludes a contract with the person entered in the Registry as an owner of land acquires the real estate even if the factual status of the land is different than that entered in the Registry.

In practice, a land and mortgage register is the main document proving the rights to a given real estate.

2. Land and Buildings Records

The Land and Buildings Records [in Polish: *ewidencja gruntów i budynków*], also known as the real estate cadastre, is a uniform, systematically updated set of information on land, buildings and premises, their owners or persons who possess them. Information disclosed in the Land and



Buildings Records is of a technical and declaratory nature and is intended to present the current legal status of a real estate.

The scope of information included in the Land and Buildings Records partially overlaps the scope of information included in the Land and Mortgage Registry, but is generally more comprehensive than the one in the Land and Mortgage Registry, because it includes information about, i.a. the location of land, boundaries and area, types of land, designation of land and mortgage registers. In the case of buildings, the information includes their location, purpose, operational functions, and general technical data. And in the case of premises, the information includes their location, utility functions, and usable floor space.

In addition, the Land and Buildings Records also include, i.a. names of property owners, including their addresses.

Although the information contained therein is public, the information from the Land and Buildings Records is issued, in the form of excerpts, maps, and copies of documents, at a request of, i.a. owners of real estates, or other persons and entities as long as they demonstrate that they have a legal interest in this regard.

3. Local zoning plans and decisions on terms and conditions of development

A local zoning plan is a basic document that presents information about what the neighbourhood is like nowadays and how it will develop in the years to come.

A local zoning plan, as it is a form of a legal act binding locally, determines an intended use of land, including public purpose projects, and specifies land development methods and conditions.

Every time a project is planned to be carried out on a given real estate, it is necessary to verify such possibilities in the local zoning plan.

A local zoning plan provides useful and detailed information about a real estate and a neighbouring area, informs about possibilities and limitations for an intended project, and shows how issuance of or modification to the local zoning plan can affect our current business activity.

As an example, the following can be learnt from a local zoning plan:

- ❖ principles of protection and shaping of spatial order;
- ❖ principles of environmental, nature and landscape protection;
- ❖ rules for the protection of cultural heritage and monuments;
- ❖ principles of shaping buildings and land development indicators (e.g. maximum building height, minimum number of parking spaces, etc.);
- ❖ special conditions of land development and restrictions on land use, including the prohibition of building development.

Local zoning plans are kept by municipalities. Municipalities are responsible for adoption of the plans and for issuing documents (excerpts and maps) from the local zoning plans related to given real estates. Local zoning plans are public and anyone can obtain excerpts and maps from the local zoning plan related to a particular real estate.

If no local zoning plan has been adopted for a given area, the above arrangements related to permitted development and use of a real estate are specified in a decision on terms and conditions of development [in Polish: *decyzja o warunkach zabudowy*]. Decisions on terms and conditions of development are issued by heads of municipalities or cities, because municipalities decide on planning and managing the space also in relation to the areas for which no local zoning plans have been adopted. Decisions are issued after the authority makes arrangements with relevant other authorities (e.g. a custodian of monuments in relation to areas or objects under custody, etc.).

Municipalities also keep registers of issued decisions on terms and conditions of development, and anyone may apply for information from such a register.

V. GENERAL INFORMATION ON CONSTRUCTION PROCESS

The construction process can be divided into the following phases:

- ❖ preparatory phase,
- ❖ designing and obtaining necessary administrative decisions,
- ❖ project realisation,
- ❖ commissioning.

During the preparatory phase, lawyers should verify the legal status of a real estate (e.g. analyse a local zoning plan, if issued) as well as other legal acts and decisions. Architects should verify an access to utilities (e.g. electricity, water, gas) and possible environmental issues. This is a phase when construction works contracts are negotiated and concluded.

The next phase focuses on preparation of a construction design and applying for all necessary administrative decisions. If no local zoning plan has been adopted for the area where a real estate is located, it is obligatory to obtain a decision on terms and conditions of development, and that decision must be issued before a building permit can be applied for.

Certain projects require also that a decision on environmental conditions be issued and an environmental impact assessment of the project or a Natura 2000 area impact assessment of the project be made.

A building permit is issued after the investor has obtained all necessary approvals, permits or opinions from other authorities, as provided for in regulations of law, and a construction design was approved by an architectural and building administration.

A building permit may contain an obligation, imposed by an architectural and building administration authority on the investor, to appoint an investor's supervision inspector, as well as other obligations.

It should be noted that a building permit is not always obligatory and in certain cases only a notification on development or execution of other construction works should be made.

The project realization phase consists in the actual development process. The investor is obliged to organize the process. Moreover, the investor's duties comprise monitoring and supervision of the development, and those duties are usually fulfilled by an investor's supervision inspector.

The building object may be commenced to be used, after the building supervision authority has been notified of the completion of the construction unless the said authority has raised an objection. However, in some circumstances, prior to commissioning a building object, it is necessary to obtain a final decision containing a permit to use.



VI. TAX MATTERS

1. Real estate tax

The real estate tax in Poland is a local tax levied by municipalities and it is paid by owners, perpetual usufructuaries or owner-like possessors of real estates.

The following are subject to taxation with the real estate tax:

- ❖ lands,
- ❖ buildings or their parts (e.g. premises),
- ❖ non-building structures or their parts associated with conducting business activity.

The tax rates vary depending on a municipality. The tax rates are determined, by resolution, by a municipal council, taking into account the upper limits of rates announced by the Minister of Finance. In case of land, buildings and their parts (premises), the tax is the product of the area / floor space and the applicable tax rate. In case of non-building structures, the tax depends on their value (the tax rate is 2% of that value).

2. Tax on goods and services (VAT)

Polish regulations on the tax on goods and services (VAT) are based on the EU legislation. It means that the principles of VAT taxation in Poland are in many cases the same as in other EU member states. Basic transactions subject to VAT are supplies of goods and supplies of services made in Poland. In some situations also free-of-charge supplies of goods or services can be subject to VAT.

As a rule, the sale of a real estate is subject to VAT. Sale of a real estate is subject to VAT at a rate of 23%. However housing real estates with usable floor space of up to 150 m² (for living accommodations) and 300 m² (for single-family apartment buildings) are taxed at a rate of 8%.

Certain transactions are VAT exempt, and in such case, the tax on civil law transactions applies.

3. Tax on civil law transactions

Sale of a real estate located in Poland may be subject to the tax on civil law transactions [in Polish: *podatek od czynności cywilnoprawnych*]. The tax rate is 2% of the real estate's market value.

The tax on civil law transactions in case of sale of a real estate is due unless the transaction is subject to VAT. The tax on civil law transactions is paid by a purchaser and it is collected by a notary who executes a sale deed.

4. Income taxes (PIT & CIT)

The income earned from the transfer of a real estate located in Poland is taxed in Poland. In case the income is gained by natural persons, it is taxed with the personal income tax (PIT), whereas if it is gained by companies or other entities, it is taxed with the corporate income tax (CIT).



The basis of an income tax is the difference between what a taxpayer has earned on the sale of an estate and the expenses they incurred to acquire it.

In case of PIT, the tax rate is 19%, but it is charged if a real estate is sold before the lapse of 5 years from the date of its acquisition or if a real estate is sold within the scope of business activity.

In case of CIT, the basic rate is also 19%, but taxpayers whose revenues do not exceed EUR 2,000,000 are subject to 9% CIT rate under certain conditions.

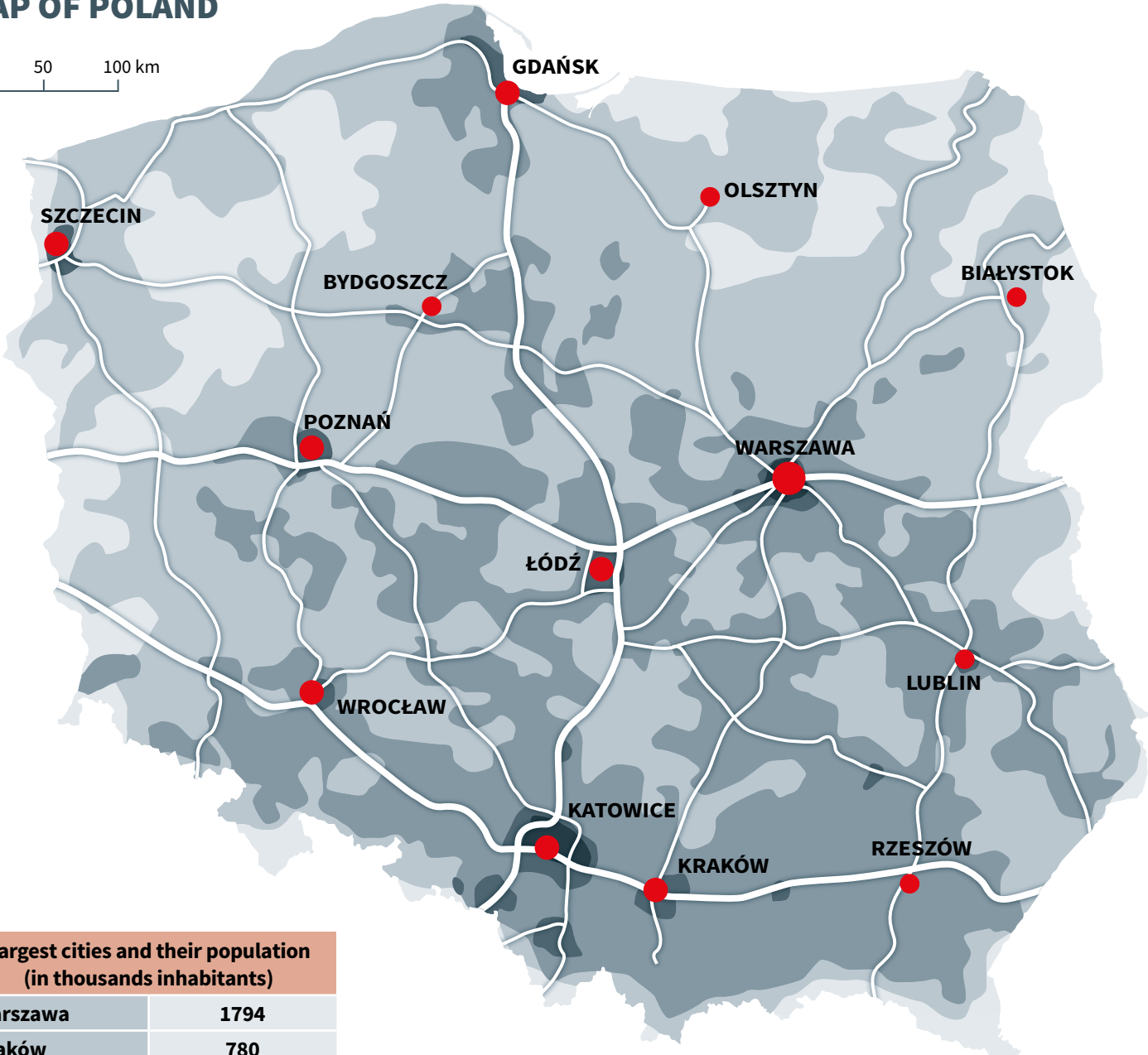
As the tax regulations include certain tax exemptions, each transaction should be examined by legal and tax advisors.

5. Income tax on commercial properties

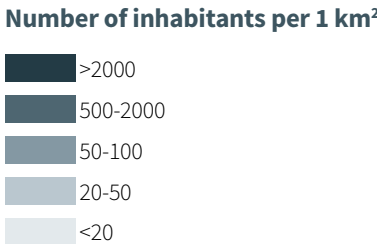
The Polish law provides for an additional income tax (income tax on commercial estates) which is due on certain commercial estates (fixed assets). The tax is applicable with regard to office buildings, shopping malls, department stores, and other retail and service buildings that are leased out, with an initial value of these buildings of more than PLN 10 million. The value of PLN 10 million regards all buildings of a given taxpayer or, in certain circumstances, all buildings owned by a certain taxpayer and its related parties. The tax is payable on a monthly basis and the rate is 0.035% of the revenue from lease of these buildings decreased by PLN 10 million. The tax so calculated reduces the standard CIT paid by the taxpayer.

During the COVID-19 epidemic, this tax has been suspended.

MAP OF POLAND



Largest cities and their population (in thousands inhabitants)	
Warszawa	1794
Kraków	780
Łódź	672
Wrocław	642
Poznań	532
Gdańsk	471
Szczecin	398
Bydgoszcz	344
Lublin	339
Białystok	297
Katowice	291



Total population	38.2 million
Land area	312,685 km²

Source: Central Statistical Agency in Poland (GUS), 2021

**Peter Nielsen & Partners
Law Office**

Atrium Centrum
Al. Jana Pawła II 27
00-867 Warszawa, Poland

phone: +48 22 59 29 000
e-mail: office@pnplaw.pl
www.pnplaw.pl

**Polska Federacja Rynku
Nieruchomości**

Plac Grzybowski 10/31
00-104 Warszawa, Poland

phone: +48 22 654 58 69
e-mail: federacja@pfrn.pl
www.pfrn.pl

AXI IMMO Group

Spektrum Tower
ul. Twarda 18
00-105 Warszawa, Poland

phone: +48 22 111 000 1
e-mail: office@axiimmo.com
www.axiimmo.com