

The Polish Real Estate Guide
Edition 2017

Poland

The real state of real estate



Building a better
working world

Contents

Preface	1
1. Polish Real Estate Market	3
1.1. Office market	3
1.2. Retail market	11
1.3. Warehouse market	18
1.4. Residential market	23
1.5. Hotel market	28
1.6. Investment market	33
1.7. Key cities in Poland	44
2. Legal and tax aspects of investing in real estate	59
2.1. Legal background	60
2.2. Investment vehicles and structures	67
2.3. Real estate financing	78
2.4. Acquisition of real estate - asset deal and share deal	90
2.5. Development and construction	105
2.6. Operation and exploitation	117
2.7. Exiting the investment	125
2.8. Sale and lease back	126
2.9. Due diligence as part of the acquisition process	128
3. Accounting and auditing	139
3.1. Introduction to the accounting framework in Poland	139
3.2. Accounting records	141
3.3. Major principles in regard to recognition and measurement of assets and liabilities	143
3.4. Financial statements	148
3.5. Financial reporting, publication and audit requirements	150
3.6. Consolidation	153
3.7. Principal differences between Polish Accounting Regulations and International Financial Reporting Standards	155
3.8. Selected Aspects of Accounting for Real Estate under International Financial Reporting Standards	161
3.9. Exemptions and simplifications applicable for small and micro entities	165
4. Contact	169
Appendix	181

Preface

EY, a global leader in assurance, tax, transaction, advisory and legal services prepared this guide to the Polish real estate market. This guide aims to provide its readers with a broad view of the market and the current investment climate, as well as legal and tax information, in a practical format to help you make informed investment decisions. Our combined expertise in this market has enabled us to produce what we hope will become an indispensable reference tool on the state of the Polish real estate market.

In conjunction with the views contained in this guide, it is important to seek current and detailed information on the commercial climate at the time of considering your investment, as this can change at any time. This guide reflects information current as of 1 January 2017 unless stated otherwise.



Polish Real Estate Market

1.1. Office market

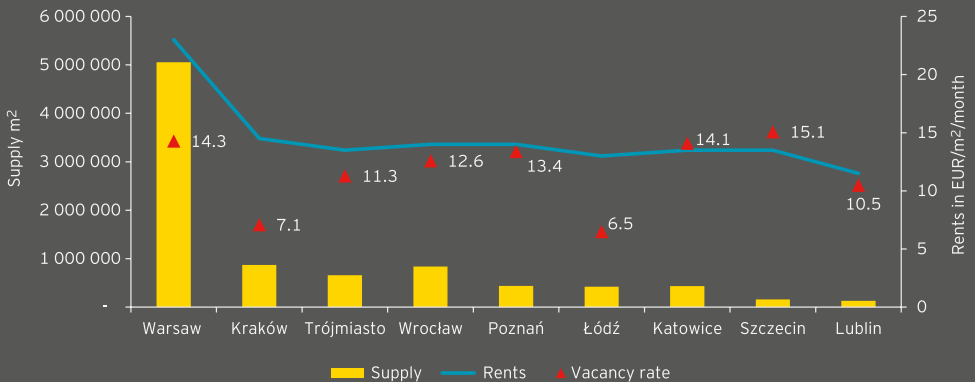
Poland - general

Following major reforms in 1992, Poland experienced a boom in economic activity throughout the 1990s. As with other markets within the emerging Polish economy, the modern office market began with an initial wave of new office construction primarily in the financial and political capital - Warsaw.

Until 1996, annual supply remained below 50,000 m², which was substantially less than the rapidly increasing demand. Because of the difficult local development and financing conditions, supply was initially slow to respond. The second half of the decade showed a rapid increase in supply, as Poland demonstrated its political stability and sound economic fundamentals. The rapid increases continued into the first part of this decade, initially addressing pent-up demand from decades of low supply, but later resulting in an office oversupply in many major cities and towns in Poland. Generally, rents were in steady decline from the 1990s until 2005. The run up to 2009 showed a reversal of this trend, with indications of a maturing office market where new buildings come to market in a more timely response to demand, thus stabilizing rents and vacancies. Although the financial crisis temporarily interrupted many of the planned projects, Warsaw remains by far the largest office market in Poland and still attracts major development activity. On the other hand, other regional business centers

have entered the path of strong economic growth, increasing interest in modern office accommodation even in smaller cities and towns. For the majority of Polish office markets, 2011 was one of the weakest years in terms of new supply. Strict lending criteria implemented by banks after 2008 initially hindered the investment process, but the market has since adjusted to the new lending conditions and construction activity has fully recovered. The annual level of new supply in 2013 was nearly 670,000 m², which represents a significant increase from previous years and the highest yearly level in Poland since 2000. Delivery of new office space in Poland continues to be strong and growing, with supply numbers for 2014, 2015 and 2016 at 600,000, 643,000, and 900,000 m² respectively. This results in the total current stock of office space in Poland in excess of 9.0 million m². While Warsaw remains the dominant location, a the majority of development outside of the capital will be in the major secondary cities of Kraków, Tri-City, Łódź and Wrocław. Overall, 2017 will be another successful and productive year for the Polish office sector, provided that domestic and foreign developers proceed with their plans and barring any major economic upheaval. In summary, regional cities continue to attract their fair share of new office development, along with a young and educated workforce to occupy the growing stock of modern office accommodation. At the same time, Warsaw office development has recovered

Office market in Poland



Source: EY

from the upset of the financial crisis and is even likely to get an added boost from Brexit as international companies reconsider the benefits of locating in Poland.

Focus on Warsaw

The modern office market in Warsaw started to develop rapidly at the beginning of the 1990s in response to the Polish political transition and economic reforms, followed by a growth period during recent years, in which the Warsaw area played a major role.

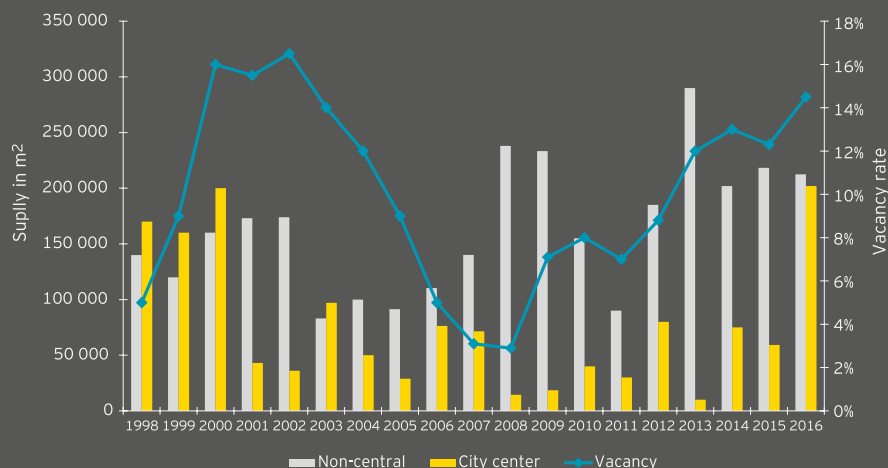
Because of its central functions and convenient location, the Polish capital city has received a significant share of the inflow of foreign capital. Large foreign companies, including various financial institutions, consulting companies, as well as international firms, usually choose Warsaw as a location of their headquarters in Poland. In addition, Warsaw has traditionally been the most important administrative and business center for domestic companies.

This led to rapid growth of demand for modern office space in the city, which in the period from 1990 until the first half of 1998 resulted in 98% to 100% occupancy rates as well as one of the highest rental levels for office space among European cities.

Supply

The year 1998 marked the first dramatic period for modern office space, when over the course of one year the supply doubled from the 300,000 m² completed between 1989 and 1997 to 680,000 m². Two years later, stock rose to approximately 1,360.0 m² and although 54% of this was in the city center, 2001 also marked the end of the period in which city center locations dominated new annual supply. With the exception of 2003, annual delivery of modern office space in non-central locations exceeded central, and the trend continued through 2013. By the end of first half of 2013, the total modern office space in

Annual delivery of modern office space (m²) in Warsaw



Source: EY

Warsaw had exceeded 4 million m², with non-central locations accounting for around 70%. Warsaw remains the most mature office market in Poland with a total office stock of over 5.05 million m² as of the end of 2016.

As the supply of new space reached and surpassed demand, the market saw vacancy rates rise to very high levels. Starting from between 4 and 6% in 1998, the building boom from 2000 to 2002 helped vacancy rates rise as far as 20% in the city center and 16% in the outskirts. As the market stabilized, and non-central locations became the norm rather than the exception, vacancy rates in central and non-central locations fluctuated between 15 and 19%, with non-central locations falling below the 10% mark (7% on average) in 2004.

Regardless of the proportion of central to non-central locations, the overall vacancy level in Warsaw systematically decreased from 2002 until 2007, when central and non-central vacancy rates stood at the 3.4%

and 2.9% respectively. With the crises came a reversal of this trend, in 2008 and 2009 vacancies doubled to over 7%. In 2010, vacancy rate remained stable at the level of 8%. Due to the growing demand for office accommodation and limited completions in 2011, the vacancy rate in Warsaw fell and reached 6.7%. However at the end of 2012, approximately 8.8% was unoccupied. Due to the significant volume of new projects completed in 2014, the vacancy rate exceeded 13%. In the end of 2015 the vacancy rate decreased, reaching the level of 12.3% but in 2016 the upward trend recovered and the average vacancy rate stood slightly below 14.4% as of the end of the year. Reasons for the increase should be associated with record-breaking annual supply delivered to the market and still insufficient demand. In particular, the non-central locations were suffering as significant part of the central annual take-up was the consequence of relocations from non-central office districts. The average vacancy rate, as

of the end of 2016, stood at 13.0% in non-central and 17.1% in central locations.

It is expected that the vacancy level will rise steadily within the next few years and older buildings will face difficulties in competing with new projects.

On the basis of location, the modern office stock in Warsaw is typically divided into two groups: central and non-central. The city center is bounded by Towarowa St., Grójecka St., Wawelska St., Armii Ludowej Ave., the Wisła River and Solidarności Ave.

The most significant office buildings located within this area include: Rondo 1, Q22, Warsaw Financial Center, Lumen, Skylight, Metropolitan, Focus Filtrów, Atrium City, Grzybowska Park, Warsaw Trade Tower and Atrium complex. Non-central office locations include Mokotów, Ochota, Wola, Włochy and Praga districts. In these locations Eurocentrum, Equator buildings, Adgar Park West, Jerozolimskie Business Park, Wiśniowy Business Park, Lipowy Office Park, numerous office buildings along Puławska street, Industrial Służewiec as well as rapidly developing business district located in the close neighbourhood of Rondo Daszyńskiego (CBD/West zone) and Dworzec Gdański (Gdański Railway & Metro Station) play key

role and are responsible for the vast majority of office supply in Warsaw.

Yearly new additions to the office stock fluctuated during last years.

The year 2010 saw the completion of over 200,000 m² of new stock, though this was planned well before the crisis and these projects had secured financing in advance of now stricter lending criteria. In 2011 approximately 120,000 m² were delivered to the market. In 2012 the market witnessed a higher growth in new office supply, which amounted to 270,000 m². In 2013 a record amount of new office space delivered to the market was observed exceeding 300,000 m². Year 2014 brought slight slowdown in new supply with nearly 280,000 m² of new space, while in 2015 the amount of new office space remained at the similar level as in 2014. Year 2016 with almost 415,000 m² of total annual supply was absolutely record-breaking. On contrary to the previous years, the balance between central and non-central supply was observable. It is expected that Warsaw will continue strengthening its position in the region over the next years thanks to numerous, planned and currently being constructed, skyscraper developments.

Major office developments completed in 2016

Name	Location	Area (m ²)	Developer
Warsaw Spire A	Central European Sq.	60,000	Ghelamco
Proximo I	Non-central Przykopowa St.	26,500	Hines
Gdański Business Center II	Non-central Inflancka St.	46,500	HB Reavis
Q22	Central Grzybowska St.	48,000	ECHO Investment
Prime Corporate Center	Central Grzybowska St.	20,500	Golub GetHouse

Name	Location	Area (m ²)	Developer
Atrium II	Central Pereca St.	20,000	Skanska
KróLEwska	Central Grzybowska St.	6,000	S+B Plan Bau Warschau
Astoria Premium Offices	Central Przeskok St.	19,000	Strabag

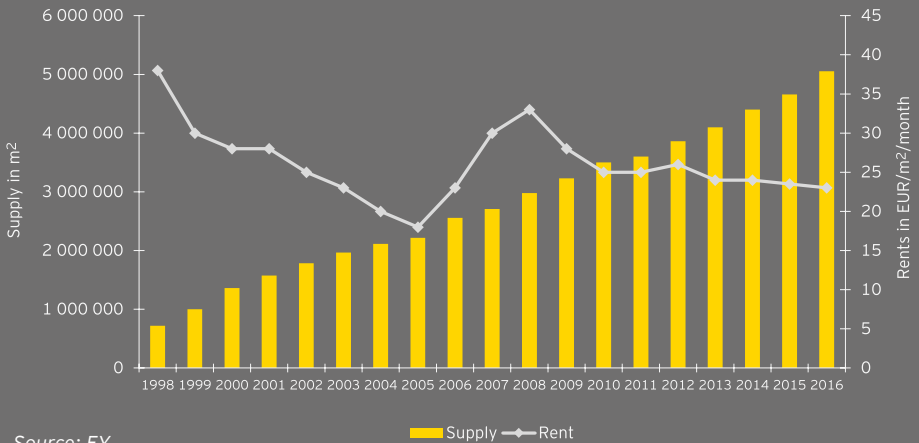
Source: EY

Major office developments under construction

Name	Location	Area (m ²)	Developer
Generation Park (building X)	Central Wronia	20,000	Skanska
West Station II	Non-central Jerozolimskie Ave.	34,000	HB Reavis/Xcity Investment
Business Garden	Non-central Zwirki i Wigury St.	55,000	Vastint
Neopark	Non-central Wynalazek St.	11,000	Yareal Poland
D48	Non-central Domaniewska St.	25,000	Penta Investments
Graffit	Non-central Domaniewska St.	30,000	Prochem
Proximo II	Non-central Przyokopowa St.	20,200	Hines
Equator IV	Non-central Jerozolimskie Ave.	25,000	Karimpol
Mennica Legacy Tower	Central Wołoska St.	64,000	Mennica Polska / Golub GetHouse
Sienna Towers	Non-central Towarowa St.	77,000	Ghelamco
Cedet	Central Jerozolimskie Ave.	15,000	Immobel Poland
Centrum Marszałkowska	Central Marszałkowska St.	13,000	BBI Development
Nowogrodzka Square	Central Jerozolimskie Ave.	11,000	Yareal Poland
Wronia 31	Central Wronia St.	15,000	Ghelamco

Source: EY

Prime office rents & cumulative office supply



Source: EY

According to project announcements, more than 400,000 m² of modern office space will enter the Warsaw market in 2017. However, predictions for next years are subject to a number of variables, as developers and their lenders take a more cautious approach to speculative projects. It is expected that some of projects will be delayed until such time when a reasonable level of pre-leasing has been achieved.

Demand

The demand for modern office space comes mainly from:

- ▶ Polish and foreign companies who are based in Poland and have participated in the rapid economic growth;
- ▶ new entrants into the Polish market;
- ▶ the new “Services and Information Economy” accelerating the need for up-to-date office space. Poland in particular has benefited from Business Process Offshoring (BPO);
- ▶ state entities which are more and more interested in leasing office space rather

than occupying self-owned, old and low quality buildings;

- ▶ renewals and relocations.

Currently, demand is driven mostly by business expansion and tenants seeking for office space of higher quality. Gross take-up in year 2016 was lower. As of the end of December 2016 annual take-up exceeded 760,000 m² which was a bit lower than in 2015 but still is exceptionally positive number and is the best proof of the high level of tenants’ activity.

Rents

Along the classic supply and demand model, rents in the late 1980s and early 1990s escalated as Poland opened its borders to foreign investment, and the supply of modern office space was extremely limited. Demand for office space pushed, rents to their peak in 1991 of USD 50/m²/month for office space.

With such limited supply available, there was little segmentation in the Warsaw office

market, resulting in both central and non-central locations having similar rental rates.

The first building boom of the late 1990s pushed overall rents down, but it was the introduction of out-of-town office parks around 1996, that helped differentiate prices between central and non-central locations. During the late 1990s rents for modern city center offices typically were 25% to 30% higher than rents for new offices in out-of-town locations. However, not all of the difference can be accounted for by location alone as non-central locations were typically built for more price-conscious tenants ready to accept a lower standard.

The second part of the boom in the early 21st century brought additional increases in supply and a further drop in overall rents' level. This temporarily pushed the gap between locations closer, but more demanding clients helped raise the standard of central locations and two altogether separate markets emerged.

Currencies have also played a role in the leasing market. In the early years low standard properties were priced in PLN, with higher standard properties geared for international clientele being denominated in DM or USD. Since accession into the EU, the Euro has become Poland's standard reference currency for leases. Today, rents for centrally located, high quality office buildings are between EUR 18 and 23/ m²/ month.

Current rents for prime office space located outside of the city center range from EUR 11 to 15/m²/month. As expected in a tough market, new rental contracts are being signed well below asking rates. Our sources suggest typical effective rents are roughly 15-30% lower than asking rents. Asking rents depend mainly on location, building standard, size and length of lease term.

Due to the solid and still growing development activity and number of new projects scheduled for completion in 2017, it is expected that rental rates may still slightly decrease, not only in central locations but also non-central locations. As a result of intense competition among landlords, the difference between asking and effective rents may increase.

Standard lease terms

The following terms for modern office buildings are regarded as common features within a typical lease agreement:

- ▶ since the introduction of the EUR, most new leases have been denominated in EUR, but paid in PLN as regulated by Polish law until 2009;
- ▶ rents are subject to annual indexation on the basis of the consumer price index in the Eurozone (MUICP, HICP);
- ▶ service charges are added to net rents and calculated according to the area leased. These rates generally vary from EUR 3.5 to 5.5 /m²/month;
- ▶ a charge for common space is usually added to the net office space. This charge is based on the pro rata share of common space used (lift, lobby, reception). Such "add-on factors" generally vary from 3% to 10% of the leased area;
- ▶ in addition to rent and service charges, tenants are obliged to pay 23% Value Added Tax (VAT);
- ▶ landlords usually require tenants to provide a rental deposit or bank guarantee equal to 3 month rent;
- ▶ leases range from 3 to 10 years; typical contracts are 5 years, with a trend toward longer leases for larger tenants and new developments;

- ▶ Incentives for tenants are currently a common practice and their range is subject to individual negotiations, which depend mostly on the size of the occupied premises and the term of the lease agreement. Typical lease incentives include:
 - ▶ rent-free period of approx. 1 month per 1 year of lease or more;
 - ▶ fit-out allowance of approx. EUR 150-250 per m² of net office space.

Key points

The following bullets list some important factors which impacted the Polish office in 2016.

- ▶ Total modern office space stock in Warsaw exceeded 5.05 million m² which places the Polish capital at the 20th place among European cities in terms of overall office space supply
- ▶ All regional cities, except for Lublin and Szczecin, recorded annual growth in total modern office space stock.
- ▶ Performance in Katowice and Kraków was exceptionally strong, with a double-digit annual change in overall supply
- ▶ During 2016, two absolutely prime office buildings were completed in Warsaw - Q22 and Warsaw Spire
- ▶ 2016 was another difficult year for Warsaw's non-central locations due to an exceptionally high level of office space delivery in the central districts. The result has been an increase in vacancy and falling prime rents
- ▶ The last year was also the first on record when the amount of office space delivered in the central locations was as high as that delivered in non-central locations
- ▶ 2016 was a successful year not only in terms of new deliveries to the market but also kicked-off, previously planned projects that confirm economy's stability and Poland's investment attractiveness

1.2. Retail market

Poland - General

Over the last few years, the Polish retail market has undergone substantial changes, growing from a limited number of state-owned and small private enterprises at the beginning of the 1990s, to a major sector that encompasses an increasing number of international retail chains and quality local outlets.

As Poland opened its economy it became easier for foreign shopping center operators, investors and developers to move across national borders and access new or less competitive markets or to exploit market niches. In this context the ownership of shopping centers, as well as the mix of retail tenants, became increasingly international. However, occupiers focus changed from anchors and mass market brands that drive demand in medium and large-sized retail schemes, to smaller shopping centers, retail parks or convenience centers located in smaller urban areas.

The early development of the retail market in Poland began in 1990s when supply grew to satisfy the demand for food. This led to the arrival of international brand



supermarkets including Billa, Hit, Rema 1000 and Globi. From 1996 on, Poland has seen a rapid expansion of major hypermarket chains such as Tesco, Hypernova, Carrefour, Auchan, Géant, E. Leclerc and Real.

Simultaneously, some supermarket chains retreated (e.g. Billa), some were sold (e.g. Hit, Géant, Leader Price, Hypernova, Real) and a few new strong brands appeared (Aldi, Alma, Piotr i Paweł, Simply, MILA, Bi1 replacing eight Real and two Auchan hypermarkets). Moreover, an expansion of discount stores represented by Lidl, Plus Discount, Netto, Kaufland and Biedronka has been observed. Information concerning the retreat of Tesco chain from Poland and three other Central European countries remained unconfirmed.

The major hyper and supermarket chains in terms of sales revenues include: Metro AG (Makro Cash & Carry, Media Markt, Saturn), Jeronimo Martins (Biedronka, Hebe), Tesco, Carrefour, Auchan Group (Auchan, Simply), Schwarz Group (Lidl, Kaufland), Emperia Holding (Stokrotka, Milea), ITM (Intermarche, Bricomarche), E. Leclerc.

Moreover, some of the largest hypermarket operators like Tesco or Carrefour have been introducing new formats such as mini-hypermarkets and supermarkets (e.g. Carrefour Express and Carrefour Market).

In July 2016, Polish government passed a new tax on retail sales with effect from September 1, 2016. The sales tax has two rates, one for sales between PLN 17m and PLN 170m and one for sales above PLN 170m per month, respectively 0.8% and 1.4%. According to the latest events, connected with open investigation of the

European Commission, the tax on retail sales is suspended until January 1, 2018.

Currently, the total modern retail supply accounts for nearly 13.5 million m². More than 70% of the total modern space is provided by shopping centers, while retail parks and outlet centers account for 27% and 2% respectively. Although the largest share in the retail market is held by Warsaw followed by other main cities such as Silesia, Tri-City, Wrocław, Poznań, Łódź, Tri-City, Poznań, Wrocław, Kraków, Łódź and Katowice, investors have been seeking opportunities in smaller cities, as more and more projects are being opened and built in towns with less than 50,000 inhabitants. Retail market continues to grow in smaller cities like Tomaszów Mazowiecki (Galeria Tomaszów), Mysłówice (Quick Park), Nowy Dwór Mazowiecki (Galeria HIT), Zambrow (Galeria Zambrow), Legionowo (Galeria Gondola), Sandomierz (Galeria Królewska), Grodzisk Mazowiecki (Galeria Grodova).

Modern retail space completed in 2016 amounted to around 460,000 m², but the most important completions took place in the last quarter of the year. Major new openings included: Posnania (Poznań), Galeria Metropolia (Gdańsk), Galeria Navigator (Mielec), Galeria Wołomin (Wołomin). This year the first closure of shopping centre in Poland took place in Sosnowiec (CH Sosnowiec).

The retail market in Poland is likely to continue to benefit from stronger domestic and investor interest. Currently, more than 360,000 m² of modern retail space is under construction, over 60% in the biggest agglomerations. A few of the major

projects in the pipeline for 2017 are at advanced stages of development, such as: Galeria Północna (Warsaw), Wroclavia (Wrocław), Forum Gdańsk (Gdańsk) and Serenada (Kraków). The remaining projects in the pipeline with openings planned in years 2017-2018 are: Ikea Lublin (Lublin), Libero (Katowice), Centrum Skalka (Tychy), Gemini Park Tychy (Tychy), Karuzela (Biała Podlaska) and Nowa Stacja Pruszków (Pruszków).

Developer's activity in small and medium cities has been observed for the last years. The actual amount of space that will be delivered to the market in 2017 will depend upon availability of financing and tenant demand for retail space. Apart from the medium - size retail projects and planned extension and remodeling of the existing retail stock, the market is tending towards the opening of "strip malls" (convenience centers) - small retail parks with an area not exceeding 5,000 m², often located in the regional cities and constituting competition for regular shopping centers.

As in previous years, in 2016 trend consisting modernization and / or extension of existing shopping malls has been observed on the market. Almost half of the shopping malls in Poland was constructed before 2004 which forces the owners to introduce some changes: refresh the interiors, refurbish facades, include new amenities, rearrange existing and encourage new tenants.

The main extensions completed in 2016 were in case of Atrium Promenada (Warsaw), Galeria Morena (Gdańsk), ETC (Gdańsk), Auchan (Gdańsk) and Galeria Sudecka (Jelenia Góra).

The most important works planned for the next three years are the extensions of Janki shopping center (20,000 m²), CK61 (Warsaw, 20,000 m²), Galeria Bałtycka (Gdańsk, 16,000 m²), Fort Wola (Warsaw, up to 55,000 m² to be delivered in 2019), Atrium Targówek (Warsaw, 5,000 m²), Arkadia (Warsaw, renovation and 2,000 m² gastronomical extension), Auchan Hetmańska (Białystok, 5,800 m²) and Galaxy (Szczecin, up to 58,000 m² in Q4 2017).

Supermarkets or hypermarkets are still important anchor tenants, although an increasing number of projects are looking towards entertainment functions to decrease grocery retailing as the basic demand driver. Standard complementary functions still include gallery shops, service points and a food court. Customers now look for quicker and more convenient shopping, and with this change of expectations, retail offer should adjust as well.

The market for retail outlet centers has been developing rapidly over the last few years. Outlet centers that are currently in operation in the surrounding areas of larger cities, are run by three chains - Factory Outlet, Fashion House Outlet Centre and Outlet Center. In 2016 Outlet Atmosfera (6,000 m²) was delivered to the market. The main future outlet openings are: Metropolitan Outlet in Bydgoszcz (2017), extension of Outlet Center in Białystok (2017), Silesia Outlet (2018) and outlet center in Rzeszów.

Focus on Warsaw

Total modern retail supply in Warsaw agglomeration exceeds 2.2 million m², but only approximately 1.7 million m² of it could be considered as “modern” retail space. This equates to around 0.9 m² of total retail space per person. Among all of the Polish large cities, Warsaw’s retail space market remains one of the least saturated, despite the highest purchasing power. The remaining retailers occupy mostly retail units situated on the ground floors of residential buildings / office buildings or department stores built before the 1990s.

First shopping centers in Warsaw opened in early 90s: Park Handlowy Janki (ex IKEA Janki), Tesco (ex HIT) and KEN Center (ex E. Leclerc). That decade brought also openings of Atrium Promenada, Klif, M1 Marki, Atrium Reduta and Atrium Targówek. Between 2000 and 2007 four major openings took place: Arkadia (one of the biggest shopping centers in Poland), Złote Tarasy, Galeria Mokotów and Blue City. Currently there are 7 major shopping centers in Warsaw only, offering over 3,500 retail units.

In October 2016 Hala Koszyki was opened, adding 7,500 m² of modern retail space in Warsaw. The two-phase extension of Promenada added 7,700 m² and the extension of Targówek Park Handlowy (Agata Meble) added 25,000 m² to the supply of retail space. In Warsaw agglomeration two newly constructed developments was opened: Fabryka Wołomin (30,000 m²) and Gondola Legionowo (10,500 m²).

Among shopping centers under construction and in the planning phase in Warsaw agglomeration there are Galeria Północna (64,000 m²), Galeria Wilanów (61,000 m²), Nowa Stacja Pruszków (27,000 m²), Art Norblin (21,000 m²), Koneser (21,000 m²) and Galeria Rondo Wiatraczna (11,000 m²).

Warsaw agglomeration still has the power to attract new investors and brands. Some areas may be considered for location of new retail developments. From the other hand, the highest potential have high streets, due to rising demand.

Major shopping centers in Warsaw

Name	Location	Area (m ²)	Owner	Completion
Arkadia	Śródmieście Jana Pawła II Ave.	110,000	Unibail-Rodamco	2004
Blue City	Ochota Jerozolimskie Ave.	65,000	Singspiel	Phase I - 2004 Phase II - 2014
Wola Park	Wola Górczewska St.	77,000	Inter Ikea Center Poland	Phase I - 2002 Phase II - 2015

Name	Location	Area (m ²)	Owner	Completion
Atrium Promenada	Praga Południe Ostrobramska St.	55,000	Atrium European Real Estate	Phase I - 1996 Phase II - 1999 Phase III - 2005 Phase IV - 2016
Złote Tarasy	Śródmieście Złota St.	65,000	AXA REIM JV CBRE Global Investors	2007
Galeria Mokotów	Mokotów Wołoska St.	62,500	Unibail-Rodamco	Phase I - 1999 Phase II - 2002 Phase III - 2013
Sadyba Best Mall	Sadyba Powsińska St.	27,000	Klepierre Group	2000

Source: EY

In the recent years Warsaw high street retail has recovered and gained importance.

High streets are located across the central quadrant of the city. The retail categories which dominate the high streets in Warsaw are cafés restaurant, bars and services providers. Also well represented are fashion and financial services and luxury retailers. Nowy Świat Street is the historical high street link between Trzech Krzyży Square to the Old Town and offers an important tourist destination. There are numerous restaurants and cafes located on the street. Plac Trzech Krzyży, on the other hand, is dominated by prime and luxury brands, stylish restaurants and cafes, extended towards to Mokotowska Street. Another important high street in Warsaw is Marszałkowska. Chmielna Street is a pedestrian zone connecting Nowy Świat and Marszałkowska which overflows with cafes and restaurants.

The opening of the second metro line has enhanced the attractiveness of Nowy Świat Street and Świętokrzyska Street. Prime high street rents for units of ca. 100 m² range between EUR 70-95 EUR/m²/month. Units in central Warsaw vary significantly in terms of standard and accessibility. Foreign and domestic retailers have also established a strong presence on the ground floor of buildings facing Jerozolimskie Avenue and Marszałkowska Street. The section of Jana Pawła II Avenue to the north of the Atrium Business Center has traditionally been known as a shopping destination and today still features a mix of moderately priced stores. Small clusters of expensive shops are also found in hotel arcades and on the ground floors of the major office buildings.

The Warsaw high street retail sector is enjoying low vacancy levels (1.6%) and a low level of saturation given the general lack of retail space in shopping centers as

compared with demand. The development potential of the high streets has drawn the interest of many developers who are now seeking new locations for their projects or expanding existing locations.

New developments that added or will add new retail space in the high street center of Warsaw include reconstruction and modernization of objects such as CEDET (Jerozolimskie Avenue), Ethos office building (Trzech Krzyży Square) and Hala Koszyki (Koszykowa Street) and the construction of office buildings with retail component (Sienna Towers, Centrum Marszałkowska and Astoria).

Retail rent rates vary widely and depend mainly on the type of facility, location and quality. Over 2016 rental rates have remained stable with no changes expected in the near future. The rates for retail units in prime locations may exceed EUR 130/m²/month.

Average rents for small units in modern shopping centers in Warsaw vary from EUR 40 to 50/m²/month depending on location, unit-size and type of merchandise. Prime units of 100-150 m² are let at EUR 60 to 100/m²/month (including rents in Złote Tarasy and Arkadia, which represent the highest retail rents in Poland). Larger units lease for approximately EUR 15 to 30/m²/month. Usually anchor store operators occupying units of more than 1,000 m² pay much less than others, with average rents from EUR 9 to 12/m²/month and even lower, around EUR 5 to 8/m²/month for hypermarkets. Service charges for smaller space vary from EUR 5 to 9/m²/month. Major tenants are charged EUR 2 to 3.5 /m²/month.

Brands that recently opened their stores in Poland include: Dunkin' Donuts, Dior (beauty products), & Other Stories, Marc&Co, L'Erbolario, Maxi Bazar, Uterque, Forever 21 or Steve Madden. Simultaneously, we observe same market exits, such as: American Eagle, Celio, Brice, Burberry, Devered 1902, Dairy Queen or Kari. Also, Marks & Spencer, Kappahl, Top Shop, Mothercare and GAP decided to close all of their stores in Poland.

Standard lease terms

Standard lease terms for retail space are similar to those in the office market. However, the typical lease length for retail space in modern shopping centers ranges from 5 to 10 years. Anchor tenants usually prefer 10-year lease agreements with extension options, typically for an additional 10-year period.

With the increasing supply of retail space, tenants have become more demanding and developers seeking attractive tenants frequently offer not only lower rental rates but also incentives such as:

- ▶ rent free period ranging from 1-2 months for smaller shops and up to 6 months for larger units;
- ▶ fit-out allowance at the level of EUR 50-200/m² for large units and up to EUR 600/m² for anchor tenants (i.e. with minimum 10-year lease agreements).

With increasing supply now becoming available, the broader Polish market, is becoming more tenant-led as compared to previous years.

On the mature retail markets, with high saturation rate, anchor tenants started to demand large fit-out contributions, extended rent free periods or partially turnover-based rents.

Key points:

- ▶ Legal changes, such as tax on retail sales (suspended until January 1, 2018) or prohibition for retail operation on Sundays (act currently under development) could in the future affect

financial performance of retail chains in Poland.

- ▶ Due to weak financial condition Alma closes stores all over Poland.
- ▶ The first closure of shopping center in Poland took place in Sosnowiec (CH Sosnowiec).
- ▶ New supply in 2016 amounted 460,000 m² and cumulated in last quarter. It is expected that new supply in 2017 exceed this year's level.





1.3. Warehouse market

Poland - General

The modern warehouse market in Poland began its development in the early 1990s, and currently includes over 11.2 million m² of warehouse space. Although initially centralized within the Warsaw metropolitan area, the modern market is now subdivided into seven regions, each of which has a well developed warehouse space offering. These include: Warsaw, Poznań, Upper and Lower Silesia, Central Poland (Łódź, Piotrków Trybunalski), Tri-City, and Kraków. Logistics centers are typically located outside of city limits with good access to major existing and planned highways.

One activity that has continued even through the crisis has been road and infrastructure construction. This continues to boost investor interest in alternative regions, especially Szczecin where demand in 2016 exceeded the level of some of the more established locations, but also Zielona Góra, Lublin, Toruń, Bydgoszcz and Rzeszów are exhibiting growth.

Its central location on the map of Europe and relatively strong economy makes Poland a perfect logistic hub for central and eastern Europe branches of international companies. The warehouse market has also been boosted by the increase in e-commerce. Amazon alone has already completed three logistic centers in Poland totaling almost 300,000 m² GLA

and a 4th with 67,000 m² is now under construction.

Currently under construction is ca. 1.5 million m² of modern warehouse space, of which 75% is already leased. Although the strong rental market reduces the risk associated with speculative development, short construction times and even more complex requirements of the tenants has pushed most developers and investors to stick to the built-to-suit formula.

Intensive market growth continues with the year 2016. New supply in 2016 exceeded 1.25 million m² - setting a new record and beating the previous year by almost 30%. Despite the high amount of new supply coming on the market, vacancy rates

increase was not significant - from c.a. 4.6% in 2015 to 5.4% in 2016. Rents remain on stable level.

Positive trends should continue in the following years and will probably affect regional markets such as Szczecin, Rzeszów, Lublin, Bydgoszcz, Toruń and Opole.

Apart from stable growth in regular warehouses we predict an increase in demand for Small Business Units (SBU) driven by growing e-commerce market. There are also new formats which have begun entering the polish market such as self-storage units or investments like Adgar Data Center - 4 storey, 150,000 m² warehouse for data servers.

The most active warehouse developers in Poland

Company	Country of origin	Major locations (existing and proposed)
Panattoni	USA	Bielsko-Biała, Błonie, Bydgoszcz, Czeladź, Garwolin, Gdańsk, Gliwice, Gorzów, Grodzisk, Kraków, Kutno, Legnica, Łódź, Lublin, Mińsk Mazowiecki, Mysłowice, Opole, Ożarów Mazowiecki, Poznań, Pruszków, Radomsko, Robakowo, Rzeszów, Sosnowiec, Stryków, Szczecin, Święcice, Teresin, Toruń, Warsaw, Wrocław
ProLogis	USA	Bedzin, Błonie, Chorzów, Dąbrowa Górnicza, Gdańsk, Goleniów, Kały Wrocławskie, Koberzyce, Młochów, Piotrków Trybunalski, Poznań, Ruda Śląska, Sochaczew, Stryków, Tarnowo Podgórne, Teresin, Ujazd, Warsaw, Wrocław
SEGRO	UK	Gdańsk, Gliwice, Łódź, Poznań, Stryków, Tychy, Warsaw, Wrocław
Goodman	Australia	Gdańsk, Gliwice, Kraków, Łódź, Poznań, Toruń, Sosnowiec, Warsaw, Wrocław, Lublin

Company	Country of origin	Major locations (existing and proposed)
P3	UK	Błonie, Mszczonów, Piotrków Trybunalski, Poznań
MLP Group	Israel	Bieruń, Lublin, Łódź, Poznań, Pruszków, Gliwice, Teresin, Wrocław
White Star (formerly AIG/ Lincoln)	USA	Gliwice, Łódź, Stryków, Warsaw
Biuro Inwestycji Kapitałowych	Poland	Kraków, Ożarów Mazowiecki, Pruszcz Gdański, Sosnowiec
Menard Doswell & Company	USA	Czeladź
Metropol Group	Poland	Błonie, Warsaw

Source: EY

Focus on Warsaw

The Warsaw modern warehouse stock is defined as properties within approximately 50 km of the city center and is split into two zones:

- ▶ zone I: approximately 680,000 m² in properties located within a 15 km radius (Okęcie, Służewiec, Targówek, Żerań), warehouse facilities in this zone host mostly pharmaceuticals, cosmetics and electronics;
- ▶ zone II: approximately 2.42 million m² in properties located 15 to 50 km from the city center (e.g. Piaseczno, Ożarów Mazowiecki, Błonie, Teresin, Nadarzyn, Pruszków).

Although the Warsaw metropolitan area continues to account for the largest single share in the Polish market (c.a. 28% of total space in Poland), this dominance has been

steadily eroding as developers push for a presence along the emerging motorways outside the major cities.

The total modern warehouse space in the Warsaw Metropolitan Area (Zones I and II) is estimated at over 3.1 million m² of modern space.

As the Warsaw warehouse market was always the most saturated one in Poland, the boom of 2014 did not affect it at first. While supply growth in regional cities was accelerating, Warsaw had a temporary downturn. Only 38,000 m² of new supply was completed in 2014 in Warsaw. Situation changed in 2015, when developers delivered around 150,000 m² - almost 4 times more than in 2014. Year 2016 brought another huge increase with more than 240,000 m² new supply and expectations for 2017 are even higher.

Currently about 350,000 m² of warehouse space is under construction in Warsaw area, most projects located in zone II. Predicting future supply becomes more difficult to estimate as developers move to client focused built-to-suit projects.

The majority of space leased in modern distribution centers is let to logistics companies, which sub-let space and provide their tenants with full service, including packaging, loading, customs clearance and transportation.

Examples of class A modern warehouse developments in Warsaw area

Project	Location	Area (m ²) [existing / proposed]	Developer / Owner	Completion
Diamond Business Park	Piaseczno	57,000	WHITE STAR (formerly AIG Lincoln)	2001-2007
Europolis Park	Błonie	178,000	Menard Doswell / CA Immo	2006-2012
Millenium Logistic Park Pruszków II	Pruszków	81,000 /182,000	MLP Group	2007-2014
Panattoni Park Ożarów	Ożarów	67,800	Panattoni	2009
Panattoni Park Pruszków	Pruszków	85,300	Panattoni	2007-2009
Panattoni Park Konotopa	Konotopa	46,700	Panattoni	2016
Platan Park	Warsaw, Ursynów	53,000	Platan Group	1998-2001
ProLogis Park Błonie	Błonie	153,000	ProLogis	1999-2008
ProLogis Park Teresin	Teresin	159,000	ProLogis	2000-2005
ProLogis Park Warsaw I	Warsaw, Okęcie	39,000	Menard Doswell / ProLogis	1995-1997
ProLogis Park Warsaw II	Warsaw, Targówek	38,300	ProLogis	2006
Żerań Park	Warsaw, Żerań	52,000	Apollo Rida / Prologis	1999-2000

Project	Location	Area (m ²) [existing / proposed]	Developer / Owner	Completion
SEGRO Business Park Warsaw Żerań	Warsaw, Żerań	49,900	Apollo Rida/ SEGRO	2005-2011
Distribution Park Annapol	Warsaw, Annapol	31,239	Hines	2007-2014

Source: EY

Despite the rise of the regional locations, Warsaw remains the most attractive destination for warehouse tenants. Demand for leasable warehouse space in Warsaw in 2016 reached 900,000 m², breaking the previous record of 2014 (860,000 m²).

Compared to 2015, the demand in 2016 increased by c.a. 34% and was c.a. 60% higher than in the second largest region - Silesian. Almost 85% of the area was leased in Zone II.

The most sought after unit sizes are 1,000 - 3,000 m², usually leased in office/warehouse facilities of above 10,000 m², located in logistics parks. Areas larger than 10,000 m² are usually leased by logistics operators or retail companies.

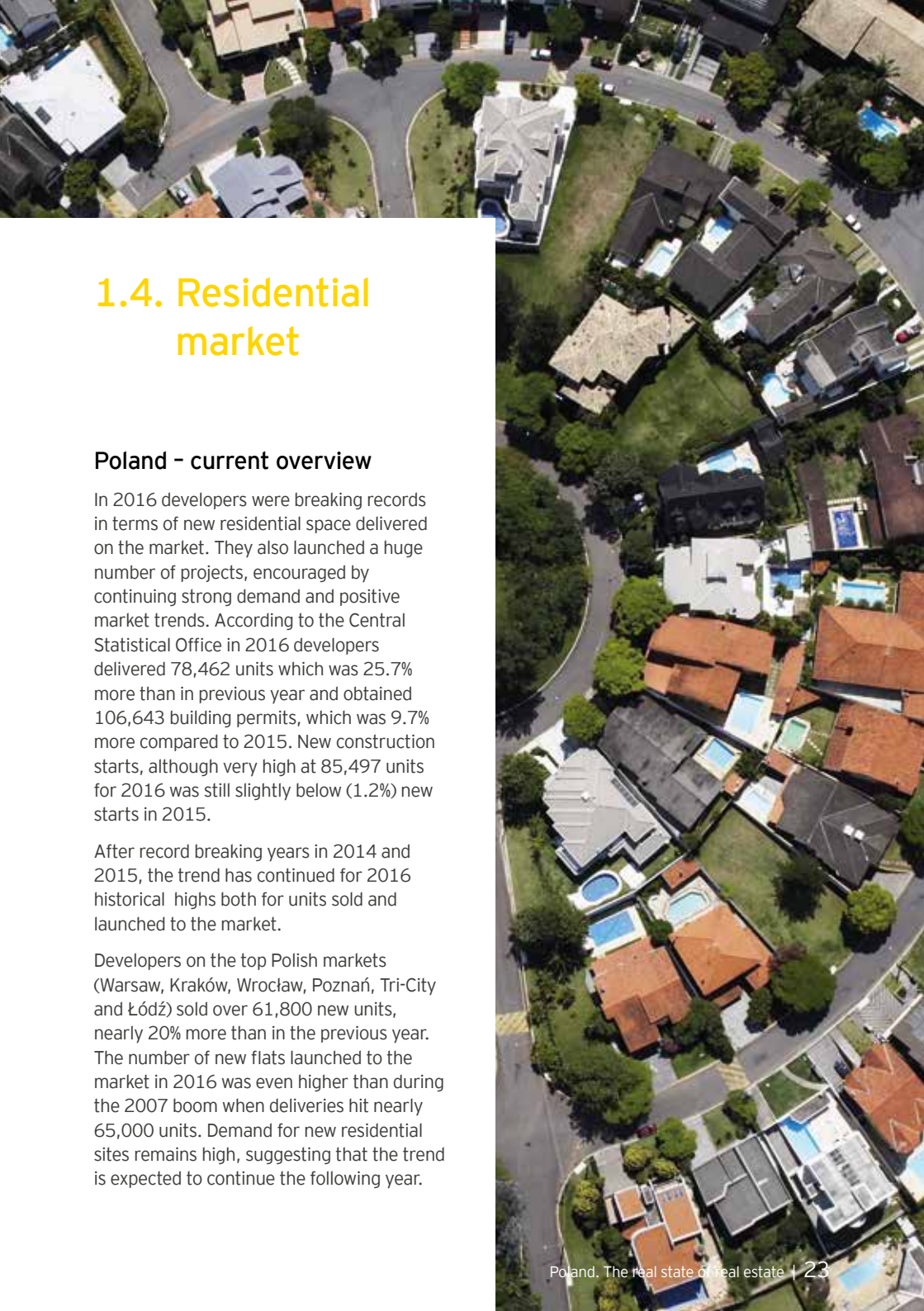
Vacancy rates in Warsaw have slightly decreased to the level of 6.5% comparing to the 6.7% in 2016.

Warsaw big box rents have remained stable with a slight downturn and for 2016 are currently quoted at the following levels:

- zone I: EUR 3.5 to 4.8/m²/month;
- zone II: EUR 1.9 to 3.0/m²/month.

Incentives have also moderated, with one month for each year of lease term being a general benchmark. In addition to rent, tenants are obliged to pay service charges for property management, maintenance, property tax and security. A fixed amount paid in advance and adjusted annually on the basis of actual costs varies from EUR 0.7 to 1.2/m²/month.

One of the characteristics for the Warsaw industrial market is a large presence of class B buildings. First modern warehouse and production facilities were built in Poland in the early 90s, thus, over these years they aged and now are being slowly replaced by newer designs better adapted to changing tenants needs.



1.4. Residential market

Poland - current overview

In 2016 developers were breaking records in terms of new residential space delivered on the market. They also launched a huge number of projects, encouraged by continuing strong demand and positive market trends. According to the Central Statistical Office in 2016 developers delivered 78,462 units which was 25.7% more than in previous year and obtained 106,643 building permits, which was 9.7% more compared to 2015. New construction starts, although very high at 85,497 units for 2016 was still slightly below (1.2%) new starts in 2015.

After record breaking years in 2014 and 2015, the trend has continued for 2016 historical highs both for units sold and launched to the market.

Developers on the top Polish markets (Warsaw, Kraków, Wrocław, Poznań, Tri-City and Łódź) sold over 61,800 new units, nearly 20% more than in the previous year. The number of new flats launched to the market in 2016 was even higher than during the 2007 boom when deliveries hit nearly 65,000 units. Demand for new residential sites remains high, suggesting that the trend is expected to continue the following year.

The market has been influenced by a number of factors, with a cumulative impact over the year. Interest rates have remained low making mortgage loans more accessible while at the same time encouraging investment buyers. Also a strong factor has been a government co-financing program 'Housing for the Young' ("*Mieszkanie dla Młodych*", *MdM*) which remains a popular program among buyers.

The program was introduced at the beginning of 2014 but due to changes had major impact in the last quarter of 2015. Since September 2015 the program was altered to cover also the secondary market and became more available for larger families. This increased the number of applications for mortgage subsidies and purchase transactions. It will continue to have an impact also in 2017 and 2018. Although more specific type of apartments fulfilling *MdM* program parameters are available on the market, there are significant disproportions regarding set price limits within the cities.

Since January 2016 the maximum available LTV level for mortgages was 85%. This means that buyers are required to pay at least 15% of equity. However, a large number of banks allow a 90% LTV. According to regulations of the Polish Financial Supervision Authority (KNF) the own contribution amounts to 20% in 2017.

Stable prices, wide range of new flats, security of matured developers' market as well as good economic indicators were the main factors influencing demand throughout 2016.

Poland - fundamentals

During the last two decades the Polish residential market growth has been driven by the overall growth of the country's economy, mortgage financing development as well as positive demographic trends observed in big cities.

One of the turning points in the market was the boom period of 2004-2007, triggered by EU accession in low interest rates, inflow of investors increased availability of mortgage financing. The boom reshaped the state of the residential market, pumping up the prices of housing and residential land.

Despite the continuing need for adequate housing, demand still relies on affordability, and to cap off a few good years of strong price growth, 2007 marked another turning point. Moderation in late 2007 led to stagnation 2008, which ultimately gave way to prices decreases in 2009. Since 2010 prices remain stable with a slight upward trend.

In Poland over 75% of the housing stock is owner occupied, while in the EU the majority of people rent their flats. The private rental sector remains difficult to estimate because in order to avoid taxation, many of the rental agreements are not officially registered. According to official statistics in Poland less than 5 out of 100 people rent their flat. The rental market is dominated by private investors - and is developing - mainly in largest cities, university cities and resort towns. An institutional level rental market is almost non-existent in Poland.

In 2014 a new initiative called Apartments for the Rent Fund appeared on the Polish residential market. This commercial project of institutional rental properties prepared by BGK (Bank Gospodarstwa Krajowego) aims to increase the market share of apartments for rent available at attractive price. The fund was buying standing assets and development projects for rent. Currently, flats are available in: Warsaw, Kraków, Wrocław, Gdańsk, Poznań, Piaseczno. Among planned locations are Katowice and Łódź. The fund plans to rent fully equipped flats at rental rates 20%-30% lower than comparable units currently available on the market. Planned investment scale is PLN 5 billion and aims to build ca 20,000 flats to let.

In 2016 new programme called "Mieszkanie+" was introduced as the part of planned new housing policy. The aim of *Mieszkanie+* is to provide 6,000 flats available for rent at lower price. New housing developments are planned to be built in cities such as: Poznań, Katowice, Stalowa Wola or Wałbrzych.

The majority of projects delivered on the Polish market are those consisting of multifamily buildings. According to the Central Statistical Office, in 2016 over 162,727 units were delivered, which was a 10.2% increase from the previous year. 48.2% were built by developers and 48% by individuals (mainly single family houses). The remaining supply was delivered by housing cooperatives and municipalities, whose share remains marginal.

There was a 12% increase in building permits issued in 2016 that amounted to 211,565. Also the number of

constructions started increased by approx. 3.3% reaching 173,932 units.

Currently, the Polish residential market is the largest in Central and Eastern Europe, however, it still lags behind western EU members in terms of quality, age of stock and market level of saturation.

Moreover, statistical indicators, such as number of residential units per 1,000 inhabitants, usable floor area per one inhabitant and per average residential unit, are below the European average.

A major obstacle constraining housing supply in Poland is administration-driven and consists of the limited number of zoning plans, which cover less than 30% of country's area. In each case, lack of zoning results in a time-consuming administrative procedure, which usually takes several months. In cases where a local spatial development plan has not been implemented it is necessary to obtain a zoning decision (*Warunki Zabudowy*) prior to applying for a building permit. Currently observed trends in majority concern rental market, also student and senior housing development.

Focus on Warsaw

Warsaw's residential market remains the most developed in Poland. The demand is driven mainly by in-migration, the highest income level in Poland and the lowest unemployment rate. Warsaw is also a popular location for shared service centres and office investments. Both of them result in increased demand on residential developments. Employment perspectives and major universities located

in Warsaw are a magnet for young people from other regions of Poland. Therefore, the market reacts for increased demand resulting the multifamily developments being focal point for developers.

More than 10% of Polish residential supply is delivered to the Warsaw market. The share of new housing units in single- family developments built in Warsaw remains under 1%. Still low interest rates in 2016 caused the increase of transaction volume resulting in withdrawal of personal savings, which is being applied to the purchase of real estate.

After the record 2001 year, number of completed units in Warsaw fluctuated between 10,000 and 15,000 p.a. for several years. Following the boom period, unit completions increased to 19,049 and 19,482 for 2008 and 2009 respectively. However, in 2009 constructions' starts were starkly curtailed, resulting in the delivery of only 12,462 dwellings in 2010 and 9,408 in 2011. In the beginning of 2012 the situation on the residential market was influenced by high supply of dwellings released in Q1. This was mainly driven by introduction of the "Developers Act" at the end of April. According to the Central Statistical Office in 2013 nearly 13,200 apartments were completed. The following years occurred even better amounting up to 14,964 and 13,320 units for 2014 and 2015 respectively, while in 2016 the number of units delivered increased to 19,505.

Warsaw remained the most expensive residential market with an average apartments' transaction price of approx. 7,600 PLN/m².

Buyers pay on average 5-7% less than the offer price. The tendency is mainly reflected in the secondary market and is also due to better alignment of demand and supply, as well as large number of completed new residential investments. According to the National Bank of Poland the average asking price of apartments on the primary market in Warsaw is currently at the level of 7,800 PLN/m². The highest average prices were observed in Śródmieście (PLN 11,700/m²) and the lowest in Białołęka district (below PLN 5,600/m²). Apart from Śródmieście, the most expensive districts in Warsaw remain Mokotów, Ochota, Ursynów and Żoliborz.

As with the rest of the country, demand in Warsaw is on the upturn due to low interest rates and government support. However, there is a threat of slowdown as mortgage financing regulations that have been tightened gradually in recent years. Nevertheless strong internal demand and demographic factors should support good in the Warsaw residential market.

Key points

- ▶ Polish residential market is characterized by constant growth of both supply and the demand especially on the primary market.
- ▶ 2016 was a record breaking for developers in terms of sales as well as new units launched on the market.
- ▶ Prices of residential properties are remaining stable with a rising tendency observed (Warsaw, Tri-City - for prime locations).

- ▶ There is a huge interest of both individual and institutional investors due to low interest rates and high demand on rental market.
- ▶ Apartments for Rent Fund is developing in new locations in biggest Polish cities.
- ▶ Housing for Young noted record high results in the 2016 and 2017 and is supposed to bring another records on the market.
- ▶ There is rising interest of investors in new market segments - student and senior housing.





1.5. Hotel market

Hotel market in Poland is in a stage of rapid growth which is reflected by the increasing number of new hotels, growing number of tourists, as well as the growing interest in the Polish market from the international hotel brands.

The key drivers for the development of hospitality business in Poland are: economic growth, rising popularity of Poland as a holiday destination as well as the development of medical tourism in Poland. Another important factor influencing positively the development of the hotel market in Poland is the dynamic growth of BPO/SSC sector.

According to data published by Central Statistical Office, the number of categorized hotels in Poland exceeds 2,450 and is growing year-to-year. However, only 14% of the categorized hotels in Poland are chain hotels compared to the average level of 30% in Europe. The higher the category of a hotel, the largest percentage of chain hotels in the category. Currently, the share of chain hotels exceeds 50% in five-star category and is well below 10% in the case of one-star hotels.

Chain hotels are also on average larger than independent ones which is connected with the minimum requirements of hotel

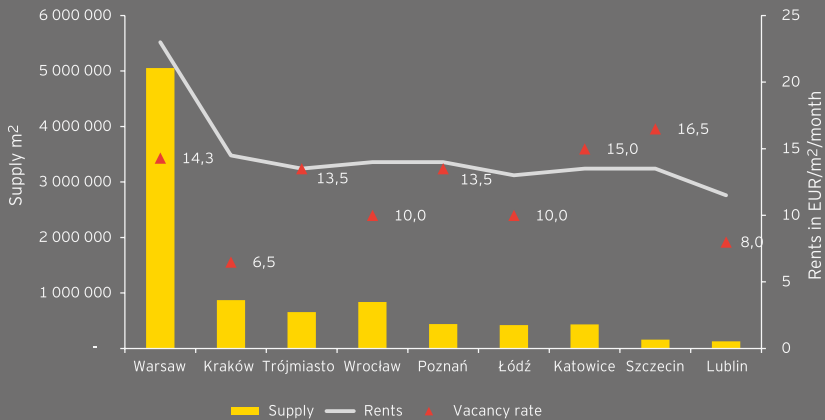
chains regarding the business profitability. In the case of larger hotels the fixed costs are distributed across greater number of rooms.

The number of tourists staying at hotels in Poland in 2015 reached nearly 17.5 million, which is an increase of 8.4% compared to the preceding year. The share of Polish guests using hotel infrastructure is rising. Foreign tourists accounted for 25.1% of total number of tourists staying at hotels, which is 1.1 p. p. less than in 2014.

The average hotel room occupancy in Poland in 2015 equaled 48.3% and was 5.6 p. p. higher than in 2014 (Central Statistical Office data).

The table below presents the number of hotels and hotel rooms in main Polish cities. As shown, Kraków is the city with the highest number of hotels. However, when looking at the number of hotel rooms, Warsaw takes the lead with 27% more hotel rooms than Kraków.

Number of hotels and hotel rooms in main cities in Poland



Source: EY based on GUS

As far as operating models are concerned, international hotel chains that are expanding their operations on the Polish market are mainly interested in management or franchise agreements. Pure lease agreements are accepted only in the case of prime locations in major cities and usually by hotel chains that are entering the Polish market. Hotel chains that are the most active in terms of new

openings in Poland are: Accor / Orbis, Hilton Hotels & Resorts, Marriott International and Rezidor.

The table below presents planned investments, which are accounted for mainly by Marriot International, Accor / Orbis and Hilton Hotels & Resorts, while resorts are mainly targeted by Rezidor which is to open hotels in Szklarska Poręba, Świnoujście and Zakopane.

Selected hotels in pipeline and planned (2017 - 2020)

Chain	Brand	Standard	City
Accor/Orbis	Ibis Styles (5)	3*	Warsaw, Kraków, Szczecin, Grudziądz
	Ibis Budget	1*	Gdańsk
Hilton Hotels & Resorts	Hampton by Hilton (5)	3*	Warsaw, Gdańsk, Łódź, Lublin
	Hilton Garden Inn	4*	Szczecin
Marriott International	Four Points by Sheraton (2)	4*	Warsaw, Zakopane
	Moxy (2)	3*	Warsaw, Katowice
	Moxy + Courtyard by Marriott	3*	Szczecin
	Moxy + Residence Inn	3*	Warsaw
	Renaissance by Marriott	5*	Warsaw
Rezidor	Radisson Blu	4/5*	Szklarska Poręba, Świnoujście, Zakopane
	Park Inn by Radisson	4*	Poznań
InterContinental Hotels Group	Holiday Inn	4*	Warsaw, Gdańsk
Likus	Prudential	5*	Warsaw
Raffles Hotels&Resorts	Hotel Europejski	5*	Warsaw
Gołębiewski	Gołębiewski	4*	Łeba

Source: EY

Focus on Warsaw

Warsaw is the largest hotel market in Poland in terms of a number of hotel rooms. It is also usually the first choice of the international brands entering the Polish market.

According to data published by Central Statistical Office, in 2016 there were 85 categorized hotels in Warsaw offering approximately 13,000 rooms. Three-star hotels constituted 40% of all hotels in Warsaw and accounted for ca. 33% of hotel rooms supply.

There were 12 five-star and 16 four-star hotels, accounting for approximately 24% and 27% of total number of hotel rooms in Warsaw, respectively.

In 2015 in Warsaw there were more than 4.2 million tourists which was an increase of 5.5% compared to the previous year. Due to the fact that Warsaw is perceived primarily as a business city, the majority of guests using the hotel infrastructure in Warsaw are business travel clients (75%).

The average occupancy in five-star hotels in Warsaw in 2015 reached almost 77%, in case of four-star hotels the occupancy was slightly higher and equaled 79%. An average occupancy across all the hotel categories in Warsaw in 2015 stood at around 71%.

The table below presents main hotel projects in Warsaw that are either in pipeline or in the planning phase.

Hotel projects in Warsaw

Chain/Brand	Standard	Location	Number of rooms	Opening date
Marriott International / Renaissance	5*	Chopin Airport, Żwirki i Wigury St.	225	3/4Q 2017
Marriott International / Moxy	3*	Ząbkowska St.	141	4Q 2017
Likus / Prudential	5*	Świętokrzyska St.	150	2017/2018
Raffles Hotels&Resorts / Hotel Europejski	5*	Krakowskie Przedmieście St.	103	4Q 2017
Wola Invest / Aparthotel Wola	n/a	Corner of Kasprzaka St. and Prymasa Tysiąclecia Ave.	416	4Q 2017
Arche / Krakowska Residence	4*	Corner of Krakowska Ave. and Łopuszańska St.	356	2Q 2018
Motel One	2/3*	Tamka St.	330	2Q 2018
InterContinental Hotels Group / Holiday Inn	4*	Corner of Twarda, Żelazna and Sienna St.	254	2Q 2018
Accor / Orbis / Ibis Styles Włochy	3*	Świerszcza St.	214	2018

Chain/Brand	Standard	Location	Number of rooms	Opening date
Marriott International / Four Point by Sheraton	4*	Corner of Konstruktorska and Suwak St.	192	2Q 2018
Puro	4*	Widok St.	180	2018
Accor / Orbis / Ibis Styles Warszawa Expo	3*	Prądyńskiego St.	120	2/3Q 2018
Hilton Hotels&Resorts / Hampton by Hilton Służewiec	3*	Corner of Cybernetyki and Postępu St.	163	4Q 2018
Marriott International / Moxy + Residence Inn	3*	Wilanowska Ave.	200 rooms (Moxy) 100 stay apartments (Residence Inn)	2019/2020

Source: EY

According to the table above, the next two years will see the opening of four upscale hotel projects - Renaissance Marriot, Hotel Raffles Europejski, Prudential and Aparthotel Wola Invest. Together, these hotels should add almost 900 new rooms and apartments to the Warsaw market and will increase the total supply of hotel rooms in Warsaw by 7%. In addition in 2017 is planned opening of hotel under new Marriott brand - Moxy with 141 rooms except, above mentioned projects, in years 2018-2019. In years 2018-2019 additional 2,100 rooms are to be delivered on the market.

Key points:

- ▶ The Polish hotel market is constantly growing both in terms of number of hotels and visitors - growth by 6.3% and 8.4% respectively.
- ▶ In 2016 the number of hotels in Poland exceeded 2,400 which in total offer more than 126,000 rooms.
- ▶ There are a growing number of chain hotels - currently their share in the market is approximately 14%.
- ▶ The number of tourists staying at hotels in Poland in 2015 reached nearly 17.5 mln.
- ▶ The projects in pipeline and planned are focused on major cities and resorts.

1.6. Investment market

Development of Polish commercial investment market has trailed behind the rest of the real estate market. Initially there were few investors and yields were in the double digits. It was not until 2004 and the advent of an EU membership that the situation improved. That year marked the beginning of an intensive four year period of foreign investment in the Polish market. Over this period the volume of transactions averaged just under EUR 4 billion a year, with a record-breaking volume of over EUR 4.7 billion in 2006; a far cry from 2001 when foreign investments were more or less limited to the Warsaw office market. Furthermore, the early years saw the commercial investment market plagued with a lack of available investment schemes, or mismanaged and over rented properties with high vacancy rates. The increasing number of transactions has not only stabilized investments but completely changed the structure of yields (downward) and prices (upward).

Year 2009 marked a historic low with less than EUR 500 million in transaction volume. However, from 2010 onwards the market has substantially improved and in 2011-2014 total investors' activity bounced back to an average of EUR 3 billion per year. Thanks to low interest rates and stable macroeconomic situation in 2015



the total volume of investment transactions in Poland went up to EUR 4 billion - a 31% increase compared to 2014.

In the year 2016 the total transaction volume in Poland amounted to EUR 4.55 billion. This is the second highest result in the history of the Polish investment market following the record value of EUR 4.7 billion in 2006. Major investment activity was recorded in retail sector (43%), however office and warehouse market increased their shares compared to 2015 to 39% and 17% respectively.

Acquisition of the Echo Prime Property Portfolio by South African investor Redefine Property, valuing the portfolio at EUR 1,248 billion was definitely the headline deal of 2016. The portfolio consisted of 10 retail and 8 office assets. This was the largest single transaction ever on the Polish investment market.

Warsaw remains a very important transaction market in Poland and is perceived by many investors as core, however, in 2016 this dominant position was overtaken by regional cities. Kraków, Wrocław, Poznań and Tricity have been targeted more and more frequently by international and domestic investors.

Major investors

The majority of players on the Polish investment market are foreign entities mostly from USA, UK, Germany, the Netherlands and South Africa.

Due to the scale of one major transaction nearly 40% of the investment volume in 2016 came from a South African fund, following 20% from the USA, 15% from

Germany, and 10% from the UK. The investment drivers were good quality assets and still attractive yields in Poland.

Less than 5% of investment volume in 2016 in Poland came from Polish capital, represented by dynamically developing investment fund Reino Partners and Polish asset manager PHN.

The insurance company PZU TFI, although not active in acquisitions this year, still holds the position of a major player in Poland, with a large prime properties' portfolio.

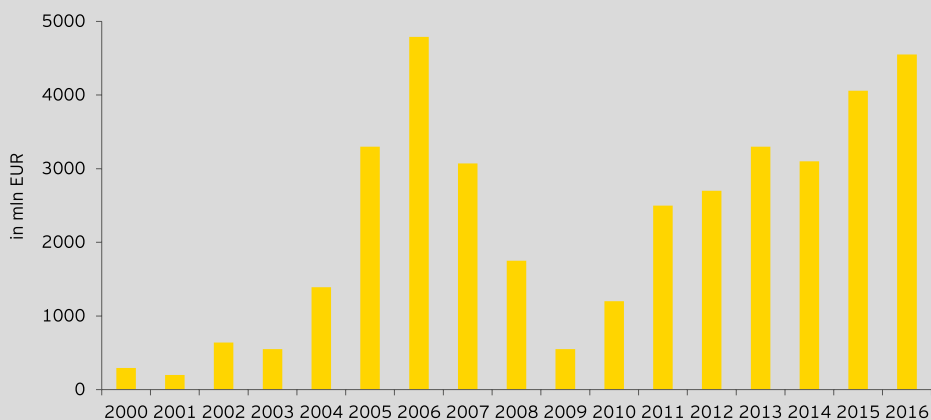
The minority share of Polish entities comes from the legal regulations as Polish law does not allow local pension funds with substantial accumulated capital to invest directly in the real estate. Instead, their portfolios are based on stocks and corporate bonds.

The plans concerning introduction of Real Estate Investment Trusts (REITs) structures in Poland might influence the structure of invested capital in the future with more domestic individuals benefiting from returns on large-scale commercial real estate assets.

The most active real estate funds in Poland in 2016 were: Redefine Properties, Rockcastle Global RE, Invesco RE, Echo Polska Properties, CBRE Global Investors, Union Investment, EPF, Savills Investment Mgmt, Hines.

Newcomers in 2016 included Redefine Properties, MVP Logistics, Invesco, Bouwfonds European Residential Fund, Prime Kapital. In 2016 Polish industrial market attracted also a Singapore sovereign wealth fund GIC.

Total investment volume in all sectors (office, retail, warehouse) 2004-2016



Source: EY

Major real estate funds investing in Poland

Fund	Sector	Major Assets in Poland
Allianz RE	Retail, Office	Silesia City Center, Warsaw Financial Center (JV with Tristan Capital Partners), Platinum Business Park
Atrium European RE	Retail	Atrium Promenada, Atrium Reduta, Atrium Targówek, Galeria Dominikańska, Focus Park in Bydgoszcz, Atrium Felicity in Lublin
Azora	Office	Aquarius Business House (Wrocław), Harmony Office Center, Mokotów Plaza, Green Park and Avatar in Kraków
Bergold Group	Office, Retail, Logistics	Jutrzenki Business Park, Okopowa 56 (Warsaw), Teofilów Business Park (Łódź), Galeria Łomża, Dukat (Olsztyn)
Blackstone / Logicor	Retail, Logistics	Shopping malls: Twierdza Kłodzko, Galeria Leszno, Magnolia Park (Wrocław), Twierdza Zamość (Zamość), Wzorczownia Włocławek, Galeria Pestka (Poznań), Galeria Tęcza (Kalisz), Warehouse properties: Łódź, Łazy, Błonie, Czeladź, Gliwice, Kraków, Piaseczno

Fund	Sector	Major Assets in Poland
CA Immo	Office	Saski Point, Saski Crescent, Sienna Center, Warsaw Towers, Bitwy Warszawskiej
CBRE Global Investors	Retail, Industrial, Office	Ideal Idea I-III, Warsaw Distribution Centre, Manhattan Business & Distribution Centre, Złote Tarasy - partial interest, Galeria Mazovia, Wars Sawa Junior, King Cross Praga, Jantar shopping center
Deka	Office, Logistics, Hotel	International Business Center (Warsaw), Intercontinental Warsaw (50%), Mokotowska Square, North Gate, Atrium 1, Bema Plaza (Wrocław), Forum Gliwice, Andersia Tower (Poznań), Andel's Hotel (Kraków)
GLL Real Estate	Office	Kazimierz Business Center (Kraków), Green Day (Wrocław), Renaissance, Marynarska Point, Dom pod Gryfami, Liberty Corner (Warsaw), Zaulek Piękna
Griffin RE	Office, Retail	Echo Investment Portfolio, Koszyki Hall, Nowa Emilia planned office, Microsoft House, Raiffeisen Business Center (Warsaw), Renoma shopping center (Wrocław), Lubicz Office Center (Kraków), Supersam (Katowice), Green Horizon (Łódź)
Heitman	Office, Retail	Marynarska Business Park, Galeria Tarnovia, Galeria Malta
Hines	Office, Logistics	Ambassador, Nestle House, Sky Office, Proximo (Warsaw), Prologis Park Warsaw & Będzin, Raben Gądkki & Grodzisk Mazowiecki
Immofinanz	Office, Retail	STOP.SHOP and Vivo! retail parks (across Poland), Brama Zachodnia, Nimbus, Equator I, Bokserska Office Center, Park Postępu, Empark Mokotów (Warsaw), Tarasy Zamkowe (Lublin)
Invesco	Office, Retail	Plac Unii, Crown Square (Warsaw), Galeria Kazimierz (Kraków), Q22
IVG (Triuva)	Office	LePalais, Feniks, Chmielna 25, Royal Trakt Offices, Norway House, Victoria Building, Nowogrodzka 21, Młodziejowski Palace
Kulczyk Silverstein Properties	Office, Retail	Ethos (Holland Park), Stratos, Mazowiecka 2/4, Ufficio Primo, Warta Tower, Krucza House
Lone Star (GTC)	Office	Wiśniowy Business Park, Millenium Plaza, Irydion, Europlex (Warsaw)

Fund	Sector	Major Assets in Poland
Octava S.A.	Office	Baltic Business Center, Alfa Plaza (Gdynia), Orange Labs, Lighthouse II (Warsaw), Quattro Forum (Wrocław), Red Tower (Łódź)
Polski Holding Nieruchomości (PHN)	Office, Logistics	Domaniewska Office Hub, Senatorska mbank HQ, Foksal City, Intraco (Warsaw), Andersia Business Center (Poznań), Alchemia phase 2 (Gdańsk)
PZU TFI	Logistics, Retail, Office	Panattoni Warehouses Łódź, Gdańsk & Wrocław, Arkońska Business Park (Gdańsk), Athina Park (Warsaw), Galeria Jeziorak, Galeria Echo Pabianice, Alma Nowy Targ
Reino Partners	Office	Kapelanka (Kraków), Malta House (Poznań), Alchemia phase 1 (Gdańsk) - last two in a JV with Bluehouse Capital
Rockcastle Global Investors	Retail	Karolinka, Solaris Centre (Opole), Pogoria (Dąbrowa Górnicza), Platan (Zabrze), Fabryka Wołomin, Bonarka City Center, Focus Mall (Zielona Góra and Piotrków Trybunalski)
RREEF (Deutsche Asset & Wealth Management)	Office, Retail	Stary Browar (Poznań), Rondo 1, Metropolitan, Focus Filtrowa, Nefryt, Topaz, Green Corner, Nordea House (Warsaw)
SEB	Office	Trinity Park III, Marynarska Point 2, University Business Center, Riverside Park, Salzburg Center (Warsaw), Philips Building (Łódź), Arkonska Business Park (Gdańsk) - partly sold
Starwood Capital Group	Office	T-Mobile Office Park, Łopuszańska Business Park (Warsaw), Katowice Business Point, Quattro Business Park (Kraków)
TPG Capital	Office, Retail, Logistics	Bonarka 4 Business, Europolis Park Błonie, Europolis Park Poland Central
Tristan Capital Partners	Office, Retail	Warsaw Financial Center (JV), Mokotów Nova (Warsaw), Enterprise Park (Kraków), Arena (Gliwice), CH Borek, CH Dąbrówka, Galeria Turzyn, EC Powiśle (JV)
Unibail Rodamco	Retail, Office	Galeria Mokotów, Złote Tarasy (77% interest), Lumen&Skylight, Arkadia, Warszawa Wileńska (Warsaw), Wrocławia under construction (Wrocław)
Union Investment	Retail, Hotel, Office	Riviera Mall (Gdynia), Manufaktura (Łódź), Focus Park (Rybnik), Sarni Stok (Bielsko-Biała), Dominikański Office, Senator, Zebra Tower, Horizon Plaza, Holiday Inn, Hampton by Hilton (Warsaw), Radisson Blu (Wrocław)

Fund	Sector	Major Assets in Poland
Valad	Retail, Logistics	CH Janki, CH King Cross, City Point, CH Ster, CH Rondo, CH Tulipan, CH Kometa, Techniczna Industrial Park, Raszyn Business Park, Piaseczno Business Park, Błonie Business Park, Gazowa Industrial Park, Warsaw Corporate Centre, Wiśniowy Business Park
WP Carey	Office, Logistics	Polkomtel HQ, Lipowy Office Park (Warsaw), FM Logistics (Mszczonów & Tomaszów Mazowiecki), H&M distribution center
Redefine Properties (REIT)	Office Retail	A4 Business Park I&II, Astra Park, Malta Office Park Oxygen, Park Rozwoju I&II, West Gate, Amber, Galaxy, Galeria Echo in Kielce, CH Echo in Bełchatów and Przemyśl, Galeria Olimpia in Bełchatów, Outlet Park Szczecin Pasaż Grunwaldzki, Galeria Sudecka, Galeria Veneda

Source: EY

For the past several years economic development and political stability have played a key role in the increase of transactions. Other important factors were:

- ▶ EU membership;
- ▶ falling PLN interest rates.

Investors were seeking to buy at high yields and sell at lower yields, expecting convergence with the EU levels (i.e. cap rate compression).

While rising prices from the cap rate compression have exceeded even the most aggressive expectations, by the third quarter of 2007 the economy had lost some of its momentum.

By 2008 financial crisis around the globe had placed many investors in the “wait and see” mode. The last few years show that investment market is on the rise again. However, it is more stable and less aggressive than before 2007.

Office properties

Office investment in regional cities has grown in importance in 2016. The trend shows that the share of office investments outside Warsaw is increasing year by year. Warsaw still attracts many foreign investors and in 2016 a new prime yield was established for the capital of Poland amounting to 5.25%.

Office transactional volume in Warsaw in 2016 totaled approx. EUR 1.15 billion, with such major transactions as purchase of Q22 by Invesco RE from Echo Investment, acquisition of Gdański Business Centre (A-B) by Savills Investment Mgmt and EPF and sale of Wiśniowy Business Park by Peakside Polonia Management to Valad Europe.

On the other hand combined volume in other cities is estimated at EUR 650 million, represented by the acquisition of Intel Allcon Park in Gdańsk by Intel Corp for over EUR 60 million, purchase of Dominikański

Square in Wrocław by Union Investment for approximately EUR 117 million or sale of Aleja Pokoju 5 in Kraków by BUMA S.A. to Warburg-HIH Invest.

Capitalization rates had seen a steady decline in Warsaw from the double digit days from 1995 to 2002. They broke the 10% mark for the first time in 2003 and went on to shed roughly a percentage point per year until 2007 when deals as low as

5.5% were struck for the best performing properties, and prime office yields hovered between 6 and 6.5%.

Capitalization rates in 2016 generally hovered at 5.5% - 7.5% for prime properties or 9-10% for value-added ones which have been gaining more and more attention among investors, due to a smaller number of prime assets available for sale.

Major office building transactions in Poland, 2016

Building	Location	Seller	Buyer
Office portfolio of Echo Investment (A4 Business Park I&II, Astra Park, Malta Office Park, Oxygen, Park Rozwoju I&II West Gate)	Katowice, Kielce, Poznań, Szczecin, Warszawa, Wrocław	Echo Investment	Redefine Properties
Q22	Warsaw	Echo Investment	Invesco RE
Gdański Business Centre (A-B)	Warsaw	HB Reavis	Savills Investment Mgmt, EPF
Wiśniowy Business Park	Warsaw	Peakside Polonia Management	Valad Europe
Konstruktorska Business Centre	Warsaw	HB Reavis	Golden Star Group
Dominikański Square	Wrocław	Skanska AB	Union Investment
Prime Corporate Centre	Warsaw	Golub&Co	Warburg-HIH Invest
Plac Malachowskiego	Warsaw	Silverstein Properties Kulczyk Investment	White Star RE, Europa Capital
Intel Allcon Park	Gdańsk	Allcon Investment	Intel Corp
Zaulek Piękna	Warsaw	Invesco RE	GLL RE Partners

Source: EY

Retail properties

Significant investments in the retail market did not start until 2001. The first major transactions were investments by Rodamco in Galeria Mokotów and in Złote Tarasy and took place in 2003, with capitalization rates at the level of 9-10.5%.

Since that time nearly every significant property in Warsaw and other Polish cities has been the subject of a transaction. By 2005 capitalization rates were pushed downward to roughly 8% and continued this downward trend through Q3' 2008 when they ranged between 5.7% and 6.5%. Due to the crisis the capitalization rates have increased by approximately 1-1.5 percentage point to fall again in 2015 because of the increased demand on the retail market.

The headline retail deal in 2016 was the acquisition of the Echo Investment Retail Portfolio by Redefine Property, valuing at approx. EUR 920 m. The second significant deal was acquisition of four shopping centres by Rockcastle, including: Bonarka City Center in Kraków for EUR 361 million at 5.4% yield, Galeria Warmińska in Olsztyn for EUR 150 million at 6.0% yield and Focus Malls in Zielona Góra and Piotrków Trybunalski for EUR 161 million.

Approx. 40% of total retail volume was recorded in Warsaw and regional cities, whereas the remaining part in smaller cities, with following examples: Jantar Shopping Center (Ślupsk), Ferio Shopping Centre (Konin), Atrium Biała (Białystok), Nova Park (Gorzów Wielkopolski), Galeria Corso (Świnoujście).

Major modern retail transactions, 2016

Building	Location	Seller	Buyer
10 retail schemes from the Echo Investment Retail Portfolio (Amber, Outlet Park Szczecin, Pasaż Grunwaldzki, Galeria Echo in Kielce, Bełchatów and Przemyśl, Galeria Sudecka, Galeria Olimpia, Galaxy, Veneda)	Kalisz, Szczecin Wrocław, Kielce, Bełchatów, Przemyśl, Jelenia Góra, Łomża	Echo Investment	Redefine Properties
Bonarka City Center	Kraków	TPG Capital	Rockcastle Global RE
Retail Portfolio of Aviva Investor (Focus Malls)	Zielona Góra, Piotrków Trybunalski	Aviva Investor	Rockcastle Global RE
Galeria Warmińska	Olsztyn	Libra Project	Rockcastle Global RE

Source: EY

Warehouse properties

The warehouse market has historically been perceived as the least mature of the real estate sectors, with only a few significant transactions closed.

However, over the last several years the warehouse sector has become one of the most dynamic and rapidly expanding. Main reasons of this phenomenon were: substantial infrastructural development, growth of e-commerce, friendly business environment, as well as highly qualified and relatively cheap labor force encouraging a large number of manufacturers to relocate production facilities to Poland.

The number of industrial transactions increased to a record high volume of over EUR 700 million in 2014 followed by a correction in 2015 at approx. EUR 500 million. In 2016 EUR the total transaction volume amounted to approx. EUR 760 million.

The largest transactions in 2016 included acquisition of the P3 Logistics Portfolio by GIC, purchase of the Hillwood Industrial Portfolio by CBRE Global Investors, sale of NBGI industrial portfolio to Hines and acquisition of Amazon in Poznań by GLL RE Partners.

Capitalization rates for the modern, properties are around 7.0 - 8.0%, exceptional assets trading below 6.5%.

Major warehouse space transactions, 2016

Building	Location	Seller	Buyer
P3 Logistics Portfolio	across Poland	TPG Real Estate	GIC
Hillwood Industrial Portfolio (8 properties)	Wrocław, Gdańsk, Ożarów Mazowiecki, Bielsko Biała, Bramki, Gdańsk, Bronisze,	Hillwood	CBRE Global Investors
NBGI Industrial Portfolio (5 properties)	Legnica, Mysłowice, Toruń, Grodzisk Mazowiecki, Garwolin	NBGI Private Equity	Hines
Annapol Business Park	Warsaw	ECI Group	Hines Poland
Amazon	Poznań	Amazon	GLL RE Partners
Łopuszańska Business Park and Silesia Logistic Park	Warsaw, Częstochowa	Immofinanz	LogiCor
Prologis Park Wrocław	Wrocław	Norges Bank (NBIM)	Prologis
DC Greenyard	Warsaw	Greenyard	CPA:17
KCI Park Technologiczny	Kraków	KCI S.A.	Centrum Nowoczesnych Technologii

Source: EY

Key points:

- ▶ The total volume of transactions in 2016 amounted to EUR 4.55 billion - the second highest result in the history of Polish investment market.
- ▶ In 2016 major investment activity was recorded in the retail sector (43%), followed by office and warehouse market (39% and 17% respectively).
- ▶ Warsaw remains the core real estate market but regional cities are growing in importance.
- ▶ Acquisition of 75% of Echo Prime Property Portfolio by South African investor Redefine Properties was the biggest transaction in 2016 on the Polish investment market. The commercial portfolio of 8 office buildings and 10 retail schemes was valued at EUR 1.248 billion. This was the largest transaction on the Polish market ever.
- ▶ New record low capitalization rates for prime assets were established in 2016. The lowest capitalization rates in 2016 were at the level of 5.25% in the office sector (Warsaw), 5.00% in retail and 6.50% for exceptional industrial assets.





1.7. Key cities in Poland

WARSAW

Population 1,749,000

Unemployment 2.8%

Major industries Trade and services

Major companies Accenture, Bank Pekao, BGŻ, mBank, British American Tobacco, Budimex, Bumar, Citibank, Coca-Cola, Colgate Palmolive, Deloitte, EY, France Telecom, General Motors, Grupa Żywiec, GTC, Huta Arcelor Warszawa, IBM, ING, Kompania Piwowarska, KPMG, Kraft Foods Polska, Nestle, PGNiG, PKO BP, PLL LOT, Polkomtel, Procter & Gamble, PwC, PZU, RBS, RWE, Samsung Electronics Polska, Shell, Skanska, Strabag, Unilever

OFFICE SECTOR

Rental level (m²/month) Central Business District: EUR 18.0 - 23.0;
Non-central: EUR 11.0 - 15.0

Total office stock 5.05 million m² of modern space

Current supply (selected buildings) Adgar Plaza, Ambassador, Atrium 1, Atrium Complex, Business Garden, Catalina Office Center, Cristal Park, Domaniewska Office Hub, EMPARK, Equator, Eurocentrum, Flanders Bussines Park, Focus, Gdański Business Centre, Harmony Office Center, Horizon Plaza, Feniks Office Building, Focus, IO-1, Jerozolimskie Business Park, Karolkowa Business Park, Konstruktorska Business Center, Kopernik Office Buidlings, Lipowy Office Park, Lumen, Marynarska Business Park, Marynarska Point, Metropolitan, Millennium Plaza, Mokotów Business Park, Mokotów Nova, Mokotów Plaza, Nefryt, North Gate, Okęcie Business Park, Park Postępu, Platinum Business Park, Poleczki Business Park, Plac Unii, Rondo 1, Royal Wilanów, Saski Crescent, Saski Point, Senator, Skylight, Trinity Park, Tulipan House, Warsaw Financial Center, Warsaw Trade Tower, Wilanów Office Park, Wiśniowy Business Park, Wolf Marszałkowska, Zebra Tower, Astrum Business Park I, Atrium 2, Eurocentrum Office Complex II, Grzybowska 43, Hala Koszyki, Proximo I, Prime Corporate Center, Q22, West Station, Wołoska 24, Warsaw Spire

Future supply (selected buildings)	Art Norblin, Astrum Business Park II, Balmoral Business Centre, Business Garden III-VII, Cedet, Centrum Marszałkowska, EC Powiśle, EQlibrium, Flanders D, Generation Park, Grójecka Offices, Infincity, Liberty Tower, Lincoln Park, Mennica Tower, Mokotów One, Neopark, Platinum BP VI, Roma Tower, Sienna Towers, Silver Tower, South Park, Spinnaker Tower, Vector, West Point, Varso Tower, The Warsaw Hub, Spark, Wronia 31, Centrum Marszałkowska, Proximo II, P4, Business Liner, Equator IV, D48, Graffit, Nowogrodzka Square, Bobrowiecka 8, Neopark
General vacancy level	14.4%

RETAIL SECTOR

Rental level (m ² /month)	EUR 90 - 130 for prime shopping center units EUR 70 - 95 for prime street units EUR 40 - 70 for shopping center units EUR 9 - 12 for retail park units
Total retail stock	2.2 million m ² of modern space
Current supply	Arkadia, Blue City, CH Bemowo, CH Janki, Atrium Reduta, Atrium Targówek, CH Wileńska, Dom Towarowy Braci Jabłkowskich, Fort Wola, Galeria Mokotów, King Cross, Klif, M1 Marki, Atrium Promenada, Plac Unii Shopping Center, Sadyba Best Mall, Wola Park, Wolf Bracka, Złote Tarasy, Auchan Łomianki, Galeria Brwinów, Factory Outlet Ursus, Galeria Rembielińska, Fashion House Piaseczno, Factory Outlet, Annopol, Ferio Wawer, Factory Ursus, Plac Vogla, Galeria Gondola, Galeria Wołomin
Future supply	Galeria Północna, Park Handlowy Marywilska 44

WAREHOUSE SECTOR

Rental level (m ² /month)	EUR 2.0 - 5.0
Total warehouse stock	3.1 million m ²

Current and planned supply in Warsaw area	Annopol Logistic Park, City Point, Diamond Business Park Piaseczno, Diamond Business Park Warsaw, Europolis Park Błonie, Krakowska Distribution Center, Łopuszańska Business Park, Manhattan Business and Distribution Center, Millenium Logistic Park Pruszków, Panattoni Park Ożarów, Panattoni Park Błonie, Panattoni Park Garwolin, Panattoni Park Pruszków, Panattoni Park Teresin, Platan Park, ProLogis Park Błonie, ProLogis Park Nadarzyn, ProLogis Park Sochaczew, ProLogis Park Teresin, ProLogis Park Warsaw, Segro Business Park (Ożarów, Nadarzyn, Pruszków), Tulipan Park Warszawa, Żerań Park, Good Poin Puławska, Diamond Business Park Raszyn, DL Invest Słomczyn Grójec, Hilwood (Marki, Pruszków), Ideal Idea (III&IV), Point of View (Góra Kalwaria, Kawęczyn, Piaseczno), West Park (Ożarów, Pruszków)
---	--

KRAKÓW

Population	762,400
Unemployment	3.7 %
Major industries	Tourism, steelworks and metallurgy, tobacco, pharmaceuticals, IT
Major companies	BP, Can Pack, Capgemini, Coca-Cola Niepołomice, ComArch, Delphi, Google, HSBC, ArcelorMittal Poland Oddział w Krakowie, International Paper, Motorola, Philip Morris, Teva, Shell, State Street, UBS, Vistula Group, Wawel

OFFICE SECTOR

Rental level (m ² /month)	EUR 13.5 - 14.5 (class-A space) EUR 11.0 - 13.0 (class-B space)
Total office stock	910,000 m ² of modern space
Current supply (selected buildings)	Aleja Pokoju 5, Alma Tower, Alstar Office Center, Avatar, Azbud Business Center, Bonarka4Business, Brama Bronowicka, Buma Square, CBil Copernicus, Centrum Biurowe Euromarket, Centrum Biurowe Kazimierz, Centrum Biurowe Lubicz, Cracovia Business Center, Diamante Plaza, Edison, Enterprise Park, Fronton, G21, Galileo, Green Office, Kazimierz Office Center, Kraków Business Park (Zabierzów), Meduza, Newton, Nowa Kamienica, Onyx, Pascal, Portus, Quattro Business Park, Rondo Business Park, Vinci Office Center, O3 Business Park I, Axis, Topos, Bonarka4Business, GO Center

Future supply	Bonarka4Business G, Dot Office, Zablocie Business Park Park II, Astris, Enterprise Park, Zablocie Business Park, Principio, High Five, Kotlarska 11, Unity Centre
---------------	---

General vacancy level	7.1%
-----------------------	------

RETAIL SECTOR

Rental level (m ² /month)	EUR 65 - 75 for prime shopping center units EUR 50 - 100 for prime street units EUR 40 - 60 for shopping center units EUR 10 - 15 for retail park units
--------------------------------------	--

Total retail stock	755,000 m ² of modern space
--------------------	--

Current supply	Logistic Center Kraków I, II, III, Kraków Airport Logistics Centre, MARR Business Park, MK Logistics Park, Panattoni Park Kraków, Logicor Kraków, MARR Business Park, MG Logistic, RB Logistic, Panattoni Park Kraków II
----------------	--

WAREHOUSE SECTOR

Rental level (m ² /month)	EUR 3.0 - 4.1
--------------------------------------	---------------

Total warehouse stock	250,000 m ²
-----------------------	------------------------

Current and planned supply	Logistic Center Kraków I, II, III, Kraków Airport Logistics Centre, MARR Business Park, MK Logistics Park, Panattoni Park Kraków
----------------------------	--

POZNAŃ

Population	541,600
------------	---------

Unemployment	2.0%
--------------	------

Major industries	Food processing, electro technical, chemical, automotive, retail, services (including finance and banking), construction industry, location of major trade fairs in Poland
------------------	--

Major companies	Aluplast Austria, Beiersdorf, Bridgestone, Carlsberg, CPC International, Enea, Franklin Templeton Investments, GlaxoSmithKline, IKEA, Jeronimo Martins, Kompania Piwowarska, Lorens Bahlsen, MAN, McKinsey, Microsoft, Międzynarodowe Targi Poznańskie, Nestle, Unilever, Volkswagen, Wrigley, Wyborowa
-----------------	---

OFFICE SECTOR

Rental level (m ² /month)	EUR 13.5 - 14.0 (class-A space) EUR 11.0 - 13.0 (class-B space)
--------------------------------------	--

Total office stock	430,000 m ² of modern space
--------------------	--

Current supply (selected buildings)	Andersia Business Centre, Andersia Tower, Business Garden Poznań, Centrum Tulipan, City Park, Delta, Dwór Hamburski, Galeria MM, Globis, Jet Office, Kupiec Poznański, Kwadraciak, Malta House, Malta Office Park, Nickel Technology Park, Nobel Tower, Nowe Garbary, Nowe Jeżyce, Okraglak, Omega, PGK Centrum, Poznań Financial Center, Poznańskie Centrum Biznesu, Rataje 164, RB House, Skalar Office Center, Szyperska Office Center, Temida, Ubiq Winogrady Business Center, Maraton I&II, Za Bramką
-------------------------------------	--

Future supply	Bałtyk Tower, Zajezdnia Poznań, Pixel 2
---------------	---

General vacancy level	13.4%
-----------------------	-------

RETAIL SECTOR

Rental level (m ² /month)	EUR 65 - 70 for prime shopping center units EUR 40 - 60 for prime street units EUR 35 - 50 for shopping center units EUR 7 - 12 for retail park units
--------------------------------------	--

Total retail stock	705,000 m ² of modern space
--------------------	--

Current supply	Stary Browar, Poznań Plaza, King Cross Marcelin, Kupiec Poznański, Auchan - Swadzim and Komorniki, ETC - Swarzędz, CH M1, IKEA, CH Franowo, Galeria Panorama, CH Piątkowo, Factory Outlet - Luboń, Galeria Podolany, Galeria Pestka, CH Malta, Green Point, Galeria Sucholeska, Galeria Malta, Poznań City Center, Park Handlowy Franowo, Galeria MM, Posnania
----------------	--

Future supply	Galeria A11
---------------	-------------

WAREHOUSE SECTOR

Rental level (m²/month) EUR 2.1 - 3.2

Total warehouse stock 1.6 million m²

Current and planned supply CLIP Poznań, Doxler Business Park, Millennium Logistic Park Poznań, Panattoni Poznań I, II, III, Panattoni Robakowo, Park Magazynowy Logit, Point Park Poznań, ProLogis Park Poznań I, II, III, ProLogis Park Września, Tulipan Park Poznań I, II, Segro Logistic Park Poznań, Amazon Warehouse, Goodman Poznań II Logistic Center, Goodman Poznań III Logistic Center, MLP Poznań South & West

TRI-CITY

Population 747,400

Unemployment 3.7%

Major industries Maritime industry, fuel industry, construction, food processing, tourism, IT

Major companies Bayer SSC, Blue Media, DGT, Gdańskie Młyny i Spichlerze Dr Cordesmeier, Elektrociepłownia Wybrzeże, Elektromontaż, Energa, ZPC Bałtyk, Gdańska Stocznia Remontowa, Gdańskie Zakłady Nawozów Fosforowych, Bank BPH, Grupa Lotos, IKEA, Intel Technology Poland, Jysk Polska, Lido Technology Poland, LPP, Lufthansa Systems, Metro AG, Mostostal Gdańsk, Neste, PepsiCo, Satel, Shell, Stocznia Północna, Thomson Reuters

OFFICE SECTOR

Rental level (m²/month) EUR 13.0 - 14.0 (class-A space)
EUR 10.0 - 12.0 (class-B space)

Total office stock 636,000 m² of modern space

Current and planned supply	Akwarium, Alfa Plaza, Alchemia, Ambra Tower, Arkońska Business Park, BCB Business Park, Centrum Biurowe Hossa, Centrum Kwiatkowskiego, Centrum Biurowe Neptun, City Arkade, Garnizon Idal House, Grunwaldzka 413, Grunwaldzka 417, Grunwaldzka 48- 50, Ka5, Łużycka Office Park, Morski Park Handlowy, Nordika, Office Island, Olivia Business Centre, Opera Office, Pasaż Przymorze - Kołobrzaska 32, Piano House, Pomerania Office, Tryton Business House, WAN - Śląska, Łużycka Plus Sadowa Business Park, Sanipor, Vigo, Waterside, Tensor Office Park, C200, Forum Gdańsk
----------------------------	--

General vacancy level	11.3%
-----------------------	-------

RETAIL SECTOR

Rental level (m ² /month)	EUR 35 - 50 for prime shopping center units EUR 27 - 50 for prime street units EUR 25 - 35 for shopping center units EUR 8 - 12 for retail park units
--------------------------------------	--

Total retail stock	720,000 m ² of modern space
--------------------	--

Current supply	Small shops and boutiques along shopping streets (Świętojańska in Gdynia, Długa and Grunwaldzka in Gdańsk as well as Monte Casino in Sopot). Modern shopping centers: Galeria Bałtycka, Auchan Port Rumia, CH Klif, Batory, City Forum, Krewetka Cinema City, Alfa Center, Madison Shopping Gallery, CH Manhattan, Centrum Kwiatkowskiego, CH Wzgórze, Matarnia Retail Park, Osowa Shopping Center, Centrum Rodzinne Witawa, Fashion House Gdańsk, Castorama, Real, Tesco, Selgros Cash and Carry, Tesco Chelm, IKEA, CH Oliwa, Galeria Przymorze, Centrum Haffnera, Szperk Gdynia, CH Riviera, Morski Park Handlowy, Centrum Kowale, Galeria Morena, Galeria Zasp
----------------	--

Future supply	Forum Gdańsk, CH Auchan
---------------	-------------------------

WAREHOUSE SECTOR

Rental level (m ² /month)	EUR 2.5 - 3.5
--------------------------------------	---------------

Total warehouse stock	385,000 m ²
Current and planned supply	ProLogis Park Gdańsk, Centrum Logistyczne Pruszcz Gdański, Panattoni Park Gdańsk, SEGRO Logistics Park, 7R Logistic Park Gdańsk, Port Gdynia Warehouse, Gdańsk Pomeranina Logistic Center, Diamond Business Park

ŁÓDŹ

Population	698,000
Unemployment	8.1%
Major industries	Textile & clothes, food processing, mechanical engineering, chemical production, trade fairs
Major companies	ABB, Amcor, Bosch-Siemens Hausgeräte, HP, Cacao Berry, Coca-Cola, Dell, Grupa Atlas, Fujitsu, Idesit, Infosys, Nordea, Phillips, Polish Pharmaceutical Group Pollena-Ewa, Sanitec Koło, Textilimpex, Vistula & Wólczanka

OFFICE SECTOR

Rental level (m ² /month)	EUR 11.5 - 13.0 (class-A/B space)
Total office stock	360,000 m ² of modern space
Current supply (selected buildings)	Aleksander Plaza, Armada Business Park, Aviator, Business House, Centrum Biurowe Zenit, Centrum Biznesowe Faktoria, Centrum Biznesowe Stanley, Centrum Biznesu Pracownia, Centrum Biznesu Łódź, Cottonhouse, Cross Point Łódź, Fabryka Lnu, Gdańska, Green Horizon, Inter-Mar, Jaracza Prestige, Kopcińskiego, Media Hub, Orange Plaza, Orion Business Tower, Papiernicza, Park Biznesu Teofilów, Prometeon Łódź, Przędzalnia Braci Muehle, Real Office, Red Tower, Synergia, Unicity, University Business Park, Wólczańska, Łódź 1
Future supply	Symetris Business Park, University Business Park II, Nowa Fabryczna, Cross Point B, Ogrodowa 8 Office
General vacancy level	6.5%

RETAIL SECTOR

Rental level (m ² /month)	EUR 45 - 50 for prime shopping center units EUR 22 - 40 for prime street units EUR 23 - 35 for shopping center units EUR 7 - 13 for retail park units
Total retail stock	676,000 m ² of modern space
Current supply	Small boutiques along Piotrkowska street, Modern shopping centers: Manufaktura, Galeria Łódzka, Tulipan Center, Pasaż Łódzki, CH M1, E. Leclerc, CH Carrefour Przybyszewskiego, OBI, Praktiker, Castorama, Leroy Merlin, Makro Cash & Carry, Selgros Cash & Carry, CH Ptak in Rzgów, CH Guliwer, CH Tesco Bałuty, CH Tesco Widzewska, Port Łódź, Ptak Outlet, Vis a vis Street Mall, CH Carrefour Kolumny, Sukcesja

WAREHOUSE SECTOR

Rental level (m ² /month)	EUR 2.0 - 3.8 for modern space
Total warehouse stock	1.41 million m ²
Current and planned supply in Central Poland region	Business Park Łódź, Diamond Business Park Łódź, Diamond Business Park Stryków, Panattoni Business Center Łódź, Panattoni Łódź East, Panattoni Park Łódź South, Parkridge Business Center, ProLogis Park Stryków, Tulipan Park Łódź, Tulipan Park Stryków, SEGRO Logistics Park Stryków, Panattoni Castorama, Panattoni Park Stryków, Logicor Łódź (I, II, III), Łódź Business Park, MLP Łódź West

WROCLAW

Population	637,100
Unemployment	2.8%
Major industries	automotive, IT, business process offshoring, pharmacy/medical assortment, finances, medical machinery production, electrical, metallurgy, house appliances and food processing

Major companies	3M, Alcatel, AmRest, Bosch, BZ WBK, Mondelez, Credit Agricole, Eurobank, EY SSC, Credit Suisse, Google, GK Kogeneracja, GK Impel Hewlett-Packard, IBM, KRUK, LG, MacoPharma, Nokia, PPG-Polifarb, Siemens, Toyota, Ultimo, US Pharmacia, Volvo, Wabco, Whirlpool, UBS
-----------------	---

OFFICE SECTOR

Rental level (m ² /month)	EUR 13.0 - 14.5 (class-A space) EUR 11.0 - 12.5 (class-B space)
--------------------------------------	--

Total office stock	845,000 m ² of modern space
--------------------	--

Current supply (selected buildings)	Aquarius Business House, Arkady Wrocławskie, Asco Business Centre, Bema Plaza, Beta Centre, Cuprum Novum, Długosza Busienss Park, Dominikański, Dubois 41, Focus Plaza, Globis Wrocław, Green Towers, Grunwaldzki Center, Heritage Gates, Hubska Office Center, Legnicka Park, Millennium Tower, New Point Offices, Oniro, Oławska Prestige, Pasaż Pkoyhof, Platon, Promenady Epsilon, Quattro Forum, Raławicka Center, Renaissance Business Centre, Silver Forum, Silver Tower, Sky Tower, Szwedzka Centrum, Wratislavia Tower, Wrocławski Park Biznesu, West House, West Gate, Nobilis Business House, Business Garden Wrocław I, Kaufland HQ, Pegaz, Promenady Zita, Twelve
-------------------------------------	--

Future supply	Sagittarius Business House I&II, Retro Office House, Green 2Day, Green Towers, Business Garden Wrocław II, Cuprum Square
---------------	--

General vacancy level	12.6%
-----------------------	-------

RETAIL SECTOR

Rental level (m ² /month)	EUR 65 - 70 for prime shopping center units EUR 44 - 60 for prime street units EUR 20 - 40 for shopping center units EUR 8 - 12 for retail park units
--------------------------------------	--

Total retail stock	693,000 m ² of modern space
--------------------	--

Current supply	Pasaż Grunwaldzki, Arkady Wrocławskie, Magnolia Park, Factory Outlet, CH Korona, Bielany Retail Park (IKEA), Auchan Retail Park Bielany, Galeria Dominikańska, Szewska Center, Kaufland, CH Borek, TGG, Tesco, E. Leclerc, IKEA, CH Marino, Renoma (after modernization), Sky Tower, Ferio Gaj, Retail Park Młyn, Family Point, Aleja Bielany
----------------	---

Future supply	Wroclavia, Tarasy Grabiszyńskie, Olimpia Park, N-Park
---------------	---

WAREHOUSE SECTOR

Rental level (m ² /month)	EUR 2.5 - 3.6
--------------------------------------	---------------

Total warehouse stock	1.49 million m ² of modern space
-----------------------	---

Current and planned supply	ProLogis Park Wrocław I, III, IV, V, VI, Parkridge Business Center, Tiner Logistic Center - Pietrzykowice, Prologis Park Wrocław I, III, IV, V, Panattoni BTS for Lear, Panattoni for Amazon, Goodman for Amazon, Panattoni Park Wrocław V, BTS Bombardier Wrocław, Hilwood Wrocław I, II, III, Segro Industrial Park Wrocław, Tiner Logistic Park, Wrocław Business Park, MountPark Wrocław, Wrocław Bielany Business Park, MLP Wrocław
----------------------------	--

KATOWICE

Population	299,000
------------	---------

Unemployment	2.9%
--------------	------

Major industries	Coal mining, metallurgical, steel, machinery, electrical, ceramic, automotive, printing, information and IT
------------------	---

Major companies	Capgemini, DuPont, Electrabel Polska, ZPUE, GK Farmakol, GK Famur, GK Kopex, GK Tauron Polska, IBM, ING, Katowicki Holding Węglowy, Polski Koks, Powertrain Polska, PwC SSC, Roca, Unilever, Węglkokoks
-----------------	---

OFFICE SECTOR

Rental level (m ² /month)	EUR 13.0 - 13.5 (class-A space) EUR 10.0 - 11.5 (class-B space)
--------------------------------------	--

Total office stock	440,000 m ² of modern space
Current supply (selected buildings)	Altus, Apiss Center Point, Armii Krajowej 6, Atrium, Centrum Biurowe Francuska, Centrum Biurowe Katowice, Chorzowska 50, Euro-Centrum Katowice, Górnośląski Park Przemysłowy, Jesionowa Business Point, Kostki, Millennium Plaza Katowice, Nowe Katowickie Centrum Biznesu, Rawa Office, Revita Park, A4 Business Park, Silesia Star, Silesia Business Park I&II
Future supply	Silesia Business Park III, .KTW
General vacancy level	14.1%

RETAIL SECTOR

Rental level (m ² /month)	EUR 49 - 60 for prime shopping center EUR 25 - 47 for prime street units EUR 20 - 35 for shopping center units EUR 9 - 11 for retail park units
Total retail stock	1.3 million m ² of modern space
Current supply	Silesia City Center, 3 Stawy, CH Dąbrówka, Castorama, OBI, Media Markt, Retail Park RAWA (IKEA), Dom Handlowy Zenit, Galeria Auchan, Galeria Katowicka, Rawa Park Handlowy, Galeria Skarbek, Galeria Nowy Różdzień
Future supply	Galeria Libero, Gemini Park Tychy, Centrum Skalka

WAREHOUSE SECTOR

Rental level (m ² /month)	EUR 2.5 - 3.5
Total warehouse stock	2.0 million m ²

Current and future supply in the Upper Silesia region

Tulipan Park Gliwice, Panattoni Park Gliwice, ProLogis Park Będzin I & II, ProLogis Park Sosnowiec, ProLogis Park - Dąbrowa Górnicza, ProLogis Park Chorzów, ProLogis Park Ujazd, Diamond Business Park Gliwice, Cross Point Distribution Center Żory, Millenium Logistic Park Tychy, Alliance Logistic Center Silesia, Panattoni Park Czeladź, Panattoni Park Myslowice, Panattoni Park Bielsko-Biała, Panattoni Park Sosnowiec, Segro Business Park Gliwice, Segro Industrial Park Tychy, Segro Logistics Park Gliwice, Segro Business Park Gliwice, City Flex Business Park (Gliwice, Bytom, Katowice, Sosnowiec), Prologis Park Ruda, MLP Gliwice



Legal and tax aspects of investing in real estate

This Chapter considers the most important legal and tax issues arising during each of the following five stages of a real estate investment:

- ▶ Financing
- ▶ Acquisition
- ▶ Development and construction
- ▶ Operation and exploitation
- ▶ Sale

The Chapter is arranged so that each of the above aspects is dealt with in a separate section (2.3.-2.8.), considering legal implications first, followed by an assessment of related important tax consequences.

The section 2.1. on the legal background (below) will introduce the reader to certain concepts and terms that may not be commonplace in transactions elsewhere in Europe. This should be read as a general introduction to the legal environment in Poland. The chapter also contains section 2.2. on investment vehicles and structures presenting information on the most common structures used in real estate investments in Poland. Taken together, they form the basis for understanding the most relevant legal and tax implications of investing in real estate in Poland.

Legal, financial and tax due diligence are also fundamental to any investment cycle and given the importance of due diligence to any transaction, we discuss the relevant procedures and key considerations in detail in section 2.9.



2.1. Legal background

2.1.1. General remarks

In general, Polish real estate law provides quite clear and stable rules which allow potential investors to make well-founded decisions about entering into real estate transactions. Additionally, there are measures and institutions which enable investors to safely conclude transactions adapted to their needs and expectations. In particular, most real property deeds (sale, contribution in kind, other transfers, establishing of a mortgage) must be executed before a notary public. A public credibility warranty of the land and mortgage register is an additional instrument which protects the purchaser against third party claims and guarantees the validity of the title acquired (as long as the purchaser acted in good faith). Moreover, since 1 July 2016, a notary public shall immediately after concluding real property transfer agreement in a form of notarial deed prepare an electronic application to the land and mortgage register and thus make an entry in the register, which also enhances a protection of the purchaser and transaction security.

Below we present some key information on real estate law in Poland which should be the base for other comments in this chapter.

2.1.2. Legal titles to real estate

The basic source of real property law in Poland is the Civil Code of 23 April 1964 (with many amendments since; hereinafter referred to as the Civil Code). Although it does not regulate this branch of law exhaustively, it constitutes a basis for other regulations regarding legal titles to real estate and their limitations or modifications.

The most common legal titles to real estate in Poland are the ownership right, the perpetual usufruct right, and obligation rights, such as lease, tenancy or leasing. Polish law also provides several limited property rights such as easements and usufruct.

Ownership right

Ownership (prawo własności) is the broadest right to real estate in Poland, equivalent to a freehold. As a rule, ownership conveys the right to possess and use real estate for an unlimited period of time (with the exception of ownership of any buildings connected with the perpetual usufruct right; see our comments below) and transfer or encumber the real estate. The ownership right may be limited by statutory law, principles of community life and the socioeconomic purpose of the right. The most common limitations result from construction law and local spatial development plans adopted by local authorities (municipalities).

Right of perpetual usufruct

Perpetual usufruct (użytkowanie wieczyste) is a right of use the real estate which may be granted by the State in relation to the State-owned land or by a local authority

in relation to the authority-owned land. In either case the respective entity (the State or the local authority) remains the owner of the land.

The perpetual usufruct right is similar to the ownership, however, there are several crucial differences:

- ▶ The perpetual usufruct right is created for a defined purpose (developing a project or conducting a specific activity) set out in the contract. If the perpetual usufructuary is in breach of these provisions, this may lead to an increase in the annual fees or even termination of the contract by the common court.
- ▶ The perpetual usufruct right is created for a specific term, in principle for a period of 99 years.

However, when the economic purpose of the perpetual usufruct of property does not require letting the land for a longer period, a shorter period of no less than 40 years is allowed. The holder of the right may apply for extending the term of the perpetual usufruct for a further period of 40 to 99 years following the lapse of the initial period. Refusal to prolong the time limit is admissible only on account of important social interest.

Once created, the perpetual usufruct right can be inherited, transferred to third parties or encumbered (i.e. mortgage, easements). The holder of the perpetual usufruct right enjoys the right to use the real property and to draw benefits from it, e.g. rental income.

Currently, the perpetual usufruct right may be created by contract, which generally requires putting the land up for a tender

(there are several exceptions provided). The winning bidder signs a notarial deed with the owner of the real estate establishing the right of perpetual usufruct. The right, however, does not come into existence until it is registered in the land and mortgage register. Other issues involving the establishment and transfer of the perpetual usufruct are accordingly governed by the regulations regarding the transfer of ownership of real estate.

The contract under which the land is transferred for perpetual usufruct may lay down potential limitations on the use of real property and indicate the manner in which the real estate is to be used.

If the real estate transferred for perpetual usufruct is a piece of developed land, the buildings and other constructions erected thereon are sold to the perpetual usufructuary in addition to the establishment of the perpetual usufruct right. If the buildings are erected after the perpetual usufruct right is established, they also become the perpetual usufructuary's property. Separate ownership of the buildings due to the perpetual usufructuary is a right strictly connected with the right of perpetual usufruct and, in consequence, the buildings share the legal "lot" of the land. In particular, the ownership of buildings may be transferred only with the right of perpetual usufruct. Once the perpetual usufruct right expires, the holder of the right is entitled to a reimbursement corresponding to the current market value of the buildings and other improvements legally implemented on the land that is the subject of the perpetual usufruct right.

The perpetual usufructuary is obliged to pay to the owner a one-off initial fee which amounts from 15% to 25% of the total market value of the land and then an annual fee of up to 3% of the total market value of the land. The rate of 3% is the basic rate provided by the law; however, there can be other rates (0.3%, 1%, 2%) applied to the real estate assigned for specific purposes, strictly listed in the legal provisions (e.g. 1% for residential purpose). The value of the land as established for the purpose of calculating the annual fee is subject to indexation (not more than once for three years). The perpetual usufructuary has the right to question a new valuation before the local appeal committee and, if unsuccessful, before a common court.

The perpetual usufructuary may request to update the annual fee for perpetual usufruct, if the value of the property has changed. The burden of proof that there are reasons to update the annual fee (e.g. decline in real property value) remains with the perpetual usufructuary.

Conversion of the perpetual usufruct into ownership in general requires consent of an owner of a real estate (the State or a local authority) and is executed in a civil law sale agreement (buyout). However, certain perpetual usufructuaries (in particular natural persons), subject to certain conditions, may demand perpetual usufruct be converted into ownership in a simplified administrative procedure.

The conversion is subject to a fee which is equal to the difference between the value of ownership and the value of the perpetual usufruct.

In general, legal persons or entrepreneurs are not entitled to demand the conversion in the simplified administrative procedure under judgment of the Constitutional Tribunal (dated 10 March 2015). They may only pursue the buyout under a standard sale agreement.

At the end of 2016, the Polish government published a draft of an act on the conversion of perpetual usufruct of developed land for residential purposes into the ownership right. The draft act envisages that the perpetual usufruct right to the land developed with residential buildings will be transformed automatically, without necessity to file any applications, by the force of law, into the ownership right. The owners of the premises in buildings developed on the land held under perpetual usufruct right will become a co-owners of the land, instead of holding shares in perpetual usufruct right. The owners of premisses will pay, up to 20 years, a special fee for conversion, in the amount of the last annual fee for perpetual usufruct. According to the newest statements of the government, it is planned that this conversion of perpetual usufruct into ownership will become applicable on 1 July 2017.

Leases and Tenancies

Polish law distinguishes between two types of leases: lease (*najem*) and tenancy (*dzierżawa*). Leases are used mainly for commercial and residential premises. Tenancies are used especially for industrial and agricultural property. Under a lease agreement, the lessor undertakes to hand over the real property for the lessee's use

for a fixed or non-fixed term, and the lessee undertakes to pay the lessor an agreed rent. The tenancy contract, however, provides for the lessee additional right to collect profits from the real estate.

Leasing

By a leasing contract, the financing party, who is an entrepreneur, undertakes to acquire the real estate from a specified transferor on the terms and conditions set forth in that contract and to give it over to the user for use or for use and collection of profits for a specified period. The user, however, undertakes to pay the financing party, by installments, a monetary remuneration equal to at least the remuneration or the price at which the financing party acquired the real estate.

There are two types of leasing that can be executed in Poland:

- ▶ operating leasing, in which case the leasehold is an asset of the lessor who makes depreciation write-offs and the lessee has an option to purchase the property at the end of the leasing term;
- ▶ financial leasing, in which case the leasehold is an asset of the lessee who makes depreciation write-offs and the transfer of the ownership of a real estate at the end of the leasing term may be stipulated directly in the leasing agreement.

The lessee should choose the type of leasing according to his requirements and needs with respect to tax settlements and the period of using the leasehold.

Easements

Easements (służebności) over land are limited property rights which may be granted over a piece of real estate (encumbered property) for the benefit of another piece of real estate (master property). Depending on the content of an easement deed, the holder of the master property may be entitled to a limited use of the encumbered property (active easement), or the holder of the encumbered property may be restricted in the exercise of his own rights for the benefit of the master property (passive easement).

Polish law distinguishes between two types of easements:

- ▶ ground easements, which are established for the benefit of the owner or perpetual usufructuary of the land and are transferred together with the property (whether that encumbered or the master property);
- ▶ personal easements, which are established for the benefit of a natural person and are non-transferable (nor can the right to exercise them be transferred).

The Civil Code also lists a separate category of easement, i.e. utility easement which may be established for the benefit of entrepreneurs being utility providers. A utility provider may ask the land owner to establish an easement over his land in order to install (and then operate and maintain) e.g. electricity cables, installations serving to supply and to channel liquids, gas, steam or other facilities. If the real estate owner refuses, the utility provider may demand

that an easement be established in return for an appropriate remuneration.

In practice, real estate may be encumbered with more than one easement or other limited property right. In such a case, as a rule, a right that arose later cannot be exercised to the detriment of the earlier right; however, there are also regulations which specify priority in a different manner.

In particular, if one of the rights is entered in the land and mortgage register, it benefits from priority against the right which is not entered in the register, regardless of the dates of their establishment.

It should be noted, however, that easements are not always disclosed in the land and mortgage register.

In consequence, the potential investor should verify whether such rights are not being executed by carrying out an on-site inspection, i.e. during a due diligence review.

Usufruct

Usufruct (użytkowanie) of real estate is a limited property right which allows its holder to use the real estate and collect benefits similar to those to which the ownership holder is entitled. The scope of the usufruct may be limited by specified profits being excluded, or to a designated part of the real estate. Usufruct is created by a contract. Usufruct is non-transferable, strictly connected with the usufructuary, so the right expires on the usufructuary's

death (or liquidation, in the case of legal entities). Moreover, a usufruct expires if not exercised for ten years.

Usufruct is similar to tenancy, yet its legal nature is different. Usufruct, as a limited property right, is effective erga omnes (it is effective in respect of third parties) and tenancy is effective only between the parties to an agreement.

2.1.3. Real property registers

There are two types of land registers in Poland: the land and mortgage register (księga wieczysta), whose main purpose is to register titles and encumbrances over real estate and the land and buildings register (ewidencja gruntów i budynków), the main purpose of which is to describe the physical features and the use of the land and buildings.

Land and Mortgage Register

Land and mortgage registers are kept by district courts and provide information on the legal status of real estate, e.g. the location of parcels of land, the ownership status of land, encumbrances on the land, mortgages.

The following real estate rights are registered in the land and mortgage register: ownership, perpetual usufruct and limited property rights such as cooperative member's right to an apartment, cooperative member's right to commercial premises, right to a single-family house in a residential cooperative, mortgage, easement and usufruct. As a rule, registrations take place at the request of the party concerned.

Land and mortgage registers are publicly available for review by anybody (even those with no legal interest) and may be also reviewed on-line, via IT system.

As far as land and mortgage register files (including maps, deeds, court decisions) are concerned, only parties with a legal interest may inspect them. Legal interest is interpreted quite narrowly and comes down to those parties whose rights are registered in a given register.

Entry of a right in the land and mortgage register is presumed to reflect the actual legal status of the real estate. Should there be any inconsistency between the legal status of real estate, the content of the register prevails in favor of the person who has acquired the right of ownership or another property right by performing an act in law with a person duly registered as the holder of the right and entitled according to the public credibility warranty of the land and mortgage register (*rekojmia wiary publicznej ksiąg wieczystych*). In consequence, if a purchaser acquires a property in good faith from a non-owner registered as owner, the acquisition is valid and the true owner cannot render the transfer invalid. His only recourse is an indemnity claim against the vendor. In consequence, an excerpt from the land and mortgage register is the key document that should be obtained and analyzed before a decision to acquire real estate is made.

The public credibility warranty does not confer protection on gratuitous dispositions or those made in favor of the acquirer in bad faith. It is also excluded by an mention in the land and mortgage register

concerning e.g. filled, but unexamined application for entry in the register or lodging a complaint against a court decision.

Land and Buildings Register

The land and buildings register is kept by starostas of the poviats (or presidents of towns with the rights of a poviat) and is a uniform collection for the whole country of systematized, updated data on land, buildings and premises, their owners and other natural persons and corporate bodies holding the land, buildings and premises.

Information on land, buildings and premises is available to the public and commonly

accessible. However, fees are collected for disseminated data sets and distributed extracts from the registers and directories as well as for copies of cadastral maps. Additionally, the party intending to inspect the register should prove his/her legal interest if the demanded extract includes personal data. The public credibility warranty does not apply to the land and buildings register, hence, the register does not provide the person acquiring the right of ownership or another real property right with the protection which is provided in the case of land and mortgage registers held by courts.



2.2. Investment vehicles and structures

2.2.1 General remarks

Further to the Polish Commercial Companies Code of 15 September 2000 (hereinafter referred to as the Commercial Companies Code) the legal entities, referred to therein, can be divided into two groups: partnerships and companies. There are two main differences between them: (i) generally, partners in a partnership take full responsibility for the partnership's liabilities (subsidiary responsibility) and (ii) partnerships are not legal persons, however, they may acquire rights and incur obligations.

Investing in real property is generally carried through specially created entities - so called special purpose vehicles (SPV). Polish legal regulations do not impose any specific legal form for such an entity. Consequently, an entity organized in any form legally accepted in Poland may serve as an SPV. The SPV may operate both as a partnership and as a company.

Among all the legal forms of organizing the entity provided for in the Commercial Companies Code, we would like to present three that are the most commonly used by the investors: a limited liability company, a limited partnership and a partnership limited by shares.

The choice of the legal form for the SPV will determine the structure under which such an entity will be operating. The foreign investor may either be a direct shareholder in the SPV, remain a parent company for a foreign/Polish company controlling the SPV, or arrange any other structure that would suit its needs from the legal and tax perspective.

There are two ways for an investor to introduce the SPV into its capital structure: the SPV may be bought or established by the foreign investor. There are numerous service firms offering the sale of established companies or partnerships (so-called “shelf companies”), that can be used straight away. However, this is always more expensive than setting up a new entity.

Apart from the legal forms mentioned above, a foreign investor may also operate in Poland and invest in real property:

- ▶ directly through its branch;
- ▶ by entering into a joint-venture.

For more complex and diversified investments a formula of a closed-end fund (Fundusz Inwestycyjny Zamknięty; FIZ) could be used, which however become less attractive due to recent tax changes implemented.

2.2.2. Limited liability company

A limited liability company (*spółka z ograniczoną odpowiedzialnością*) is commonly used as the SPV for real estate investments or development projects.

The features of the limited liability company

are set out in the Commercial Companies Code, the most important of them being:

- ▶ it may be created by one or more persons for any purpose allowed by law (it may not be formed solely by another single-shareholder limited liability company);
- ▶ liability of the shareholders is limited to their contribution to the share capital of the company;
- ▶ the share capital of the company shall amount to the minimum of PLN 5,000 (ca. EUR 1,200) and is divided into shares of equal or non-equal nominal value;
- ▶ the share capital can be covered by a contribution in-kind;
- ▶ limited liability company is a legal person and as such, it is a party to specific rights and obligations;
- ▶ it acts through its body, i.e. the management board; the members of the management board, in general, are not liable for the company's liabilities.

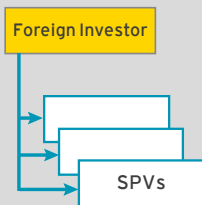
The Commercial Companies Code provides for an institution of a “company in organization”. This means, that a limited liability company set up by signing the articles of association may acquire rights on its own behalf, including the right of ownership of real estate and other rights, incur obligations, sue and be sued even before its registration with the registry court.

It is also possible to register a limited liability company with the registry court via the Internet. The procedure is simplified in comparison to the standard procedure and

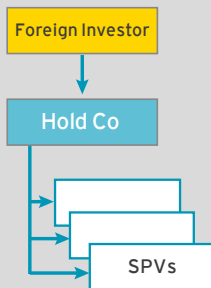
requires the registration of the company through a dedicated website of the Ministry of Justice (<https://ems.ms.gov.pl/>). However, during the online registration of the limited liability company it is not possible to make an in-kind contribution, hence, the entire share capital must therefore be paid in cash.

The SPVs may be set up directly by the foreign investor, being the only shareholder (bearing in mind the limitations indicated above). It is obviously possible to introduce several SPVs established (or purchased) by the same shareholder in order to divide the investment risk between them. However, depending on the intentions of the investor and bearing in mind possible tax effectiveness of the scheme, a simple one step structure may be enlarged and involve, for example, setting up a holding company, abroad or in Poland, which holds the shares of the SPVs.

One step structure with several SPVs, allowing diversification



A structure with a holding company, gathering several SPVs



2.2.3 Partnerships

The main features of partnerships are the following:

- ▶ partners act in the name of the partnership;
- ▶ partners are responsible for the liabilities of the partnership;
- ▶ the assets of the partnership include any property contributed to the partnership;
- ▶ there are no minimum capital requirements (excluding the partnership limited by shares in case of which the minimum share capital amounts to PLN 50,000, i.e. ca. EUR 12,000);
- ▶ although it is not classified as a legal person, a partnership may acquire rights on its own behalf, including the right of ownership of real estate and other rights, incur obligations, sue and be sued.

In recent years the number of partnerships used for the purposes of investment structures significantly grew.

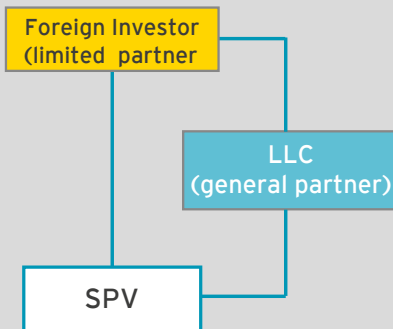
Limited partnership

A limited partnership (*spółka komandytowa*) is a partnership of which at least one partner is liable to the creditors for the obligations of the partnership without limitation (the general partner-komplementariusz) and the liability of at least one partner (the limited partner-komandytariusz) is limited to the value defined in the partnership agreement.

This feature of the limited partnership results in the specific structure that needs

to be implemented. Rights and obligations in the partnership should be split between two entities (limited partner and general partner). It is a common practice that the investor takes the role of the limited partner in order to avoid the full liability, whereas an additional limited liability company is established to serve as a general partner in the SPV. As mentioned with respect to the structures involving limited liability companies, also in case of limited partnerships various structures may be involved, depending on the specific needs of the investor. Most commonly however, the limited liability company will possess a minority position in the SPV and shall be a 100% subsidiary of the investor, nevertheless it may take specific functions in the SPV - e.g. management duties.

Structure with limited partnership



Partnership limited by shares

A partnership limited by shares (spółka komandytowo-akcyjna) is a partnership the purpose of which is to conduct a business enterprise under its own business name, where at least one partner (general partner

komplementariusz) shall bear unlimited liability towards the creditors for obligations of the partnership and at least one partner shall be a shareholder (akcjonariusz).

Partnership limited by shares is the only partnership in case of which there are minimum share capital requirements, i.e. the share capital has to amount to at least PLN 50,000 (ca. EUR 12,000).

The specific features of this entity results in two kinds of involvement in the partnership, the general partner acts like a partner in any other partnership- i.e. represents the partnership and takes subsidiary responsibility for the partnership's obligations, while the shareholder acts like a shareholder in a joint-stock company, i.e. his involvement is purely of a financial nature.

The partnership limited by shares is subject to some additional restrictions provided for by the Commercial Companies Code:

- ▶ in case of in-kind contributions the auditor's opinion is required,
- ▶ profit-sharing occurs in groups (separately shareholders and general partners).

Tax advantages

Till 31 December 2013 both limited partnership and partnership limited by shares were considered transparent for the purposes of corporate income tax and therefore commonly used as SPVs in real property investments.

Due to CIT law changes from 1 January 2014 partnerships limited by shares are

no longer considered tax transparent and became corporate income taxpayers.

In the case of limited partnership, taxable revenues and costs generated by the partnership are allocated to the partners (both limited and general) and recognized for corporate income tax purposes on an on-going basis at their level (i.e. limited partnerships are tax transparent).

Partnerships pay other taxes, such as VAT, real estate tax, and civil law transaction tax, and they may pay withholding taxes (e.g. withholding tax on interest and royalties as well as withholding tax on remuneration paid to individuals, as a tax remitter).

The table below compares the business and taxation aspects of the limited partnerships and limited liability companies:

	Limited liability company	Limited partnership
possesses legal personality	YES	NO
can be established by a single shareholder/partner	YES (NO if to be established by a LLC, which has only one shareholder itself)	NO
can acquire real property	YES	YES
the shareholders/ partners are personally liable for the company's debt	NO	general partner - YES limited partner - NO
minimal share capital	5.000 PLN (ca. EUR 1,200)	NO
management board	obligatory	NO
supervisory board	voluntary*	NO
Taxation of income (from exploitation or sale of assets)	19% at the company level	19% at the level of the partners
Taxation of the distribution of income to shareholders / partners	19% under certain conditions there can be relief for shareholders who are legal persons (based in Poland or in the EU/ EEA). Reduced rates for foreign shareholders on the basis of double taxation treaties (depending on the treaty)	NO

	Limited liability company	Limited partnership
Civil law transaction tax on shareholder / partner loans	NO	0.5% on the value of the loan payable by the partnership
Applicability of thin capitalization rules	YES	NO although interest paid to the partner being the lender cannot be recognized as a tax deductible cost of this partner (on the other hand, interest received constitutes taxable income of this partner)
Ability to offset profits and losses from various projects (carried out in separate companies/ partnerships)	NO only in the case of establishing a tax capital group	YES profits and losses are compensated at the level of partners
Taxation in Poland of the sale of shares in the company / partnership	19% possible relief for foreign shareholders on the basis of double taxation treaties (depending on the treaty)	19% it is not clear whether the same relief possible in the case of partnerships

The main advantages of using a limited partnership in an investment structure are as follows:

- ▶ profit distributions are not taxed: there is only one level of taxation;
- ▶ limitation of liability vis-à-vis creditors for the limited partner (who is liable only up to the amount agreed by the partners in the articles of association, called the commendam sum);
- ▶ the ability to offset profits and losses on different projects conducted at the level of the partners.

A limited liability company can be transformed into a limited partnership, although such a process may attract taxation in Poland. A detailed analysis is required in each case.

2.2.4. Joint venture

Polish legal regulations do not provide any definition of a joint venture, nevertheless, it is a useful solution to combine entrepreneurs' efforts in achieving the common goal.

The term joint venture may be understood as a cooperation of two entities resulting in setting up a new company (the investment on such basis is carried through the given company, as described before) or it may be only a very close cooperation between the two entities, which allocate capital for activities implemented jointly by sharing costs and revenues under a joint venture contract, without creating a separate business entity.

The objectives for the creation of joint ventures are:

- ▶ gaining access to new markets,
- ▶ synergies,
- ▶ risk diversification,
- ▶ achieving economies of scale,
- ▶ gaining access to cheaper sources of supply and cheaper financing,
- ▶ joint development and sharing of technology,
- ▶ overcoming barriers and administrative duties created by the country of one of the partners.

2.2.5 Investment Fund - closed-end fund

The Polish Investment Funds' activity is comprehensively regulated by the Act of 27 May 2004 on Investment Funds (hereinafter referred to as the Act on Investment Funds). According to that Act, the sole object of the investment fund's activity is to invest the monies acquired from the participants in shares, securities, money market instruments and other property rights - including real property.

Investment funds differ from regular legal entities such as capital companies, as an investment fund merely forms an asset pool consisting of the payments of the participants and the assets acquired for the said payments.

The Act on the Investment Funds differentiates in general between Open-End Investment Fund and Closed-End Investment Fund (hereinafter referred to as FIZ).

FIZ is a legal person. The primary principle of the FIZ is the fixed number of participation titles (investment certificates) issued in exchange for contributions made by its participants (investment certificate-holder). FIZ does not issue participation titles on every demand of an investor as is the case with the open-end investment funds, but rather in discretionary periods of time. In order to subscribe for investment certificates, the participant has to make a contribution to the FIZ. Generally, the participants may contribute to the FIZ cash, shares or real estate.

The FIZ's bodies are the Management Company, the Board of Investors (controlling body) and General Investor's Meeting.

The Management Company (*Towarzystwo Funduszy Inwestycyjnych*) is a legal entity separate from the Investment Fund. According to the legal provisions only a joint-stock company with its registered office in Poland holding authorization to conduct the activities related to creating investment funds and managing them issued by the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*),

may be an investment fund management company. This means that the Management Company carries out its activities on the basis of the permit issued by the Polish Financial Supervision Authority and under its supervision.

A Management Company may be formed by an investor, however, it is common practice that already existing Management Companies are engaged to take this role. In such a case an investor makes an agreement with a Management Company. Consequently, the investor only holds investment certificates in the FIZ and through this structure invests in particular property.

The Management Company fulfils two primary functions: (i) at the beginning - it acts as a founder of the FIZ, (ii) when the FIZ is established and registered - it becomes its governing body (represents FIZ in transactions with third parties).

In accordance with the Act on Investment Funds, the Management Company shall be liable to the participants in the FIZ for all the damage caused by the failure to perform or improper performance of its duties as regards the management of the FIZ and its representation.

The above shows that the structure needed to implement FIZ is complex and requires:

- a) engaging a Management Company,
- b) establishing an FIZ,
- c) establishing the operating companies, which may acquire the real property.

Nevertheless, establishing an FIZ structure has important advantages. First of all, it allows for additional financing for

the investments to be raised by selling investment certificates. This may be very useful in entering in larger, long-term real property investments.

Until recently the use of this structure, if properly implemented, could lead to the deferral, or even exemption from taxation, of the operating and capital gains generated from real estate as FIZ was generally exempt from CIT in Poland.

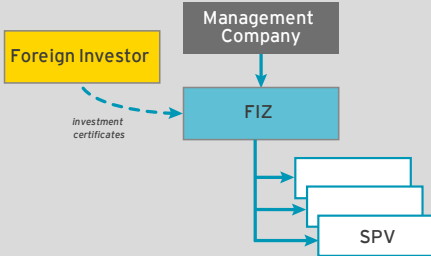
Similarly, a foreign investment fund established in the EU or EEA country could be used (the Polish CIT law in force from 1 January 2011 provides for such a possibility explicitly).

However, starting 1 January 2017, income of FIZ or a foreign investment fund resulting from:

- ▶ a share in profit generated by tax transparent entities;
- ▶ interest on loans issued to tax transparent entities and interest on those entities' other liabilities towards the fund;
- ▶ interest on a share in tax transparent entities;
- ▶ donations/ gifts or other free or partially free benefits from tax transparent entities;
- ▶ interest (discount) on securities issued by tax transparent entities;
- ▶ transfer of securities issued by tax transparent entities or shares in such entities;

is no longer CIT exempt. Set-up of the structure designed for real estate holding which could benefit from the CIT exemption is, therefore, even more complex exercise than before.

Example of a FIZ structure



2.2.6 Real estate investment trusts

General remarks

Real estate investment trust (hereinafter referred to as REIT) is a fund investing in commercial real estate, guaranteeing a regular dividend for investors. According to the European Public Real Estate Association, the average dividend funds in Europe for the period 2010-2015 amounted almost 5 percent. Worldwide, REITs offer investors many advantages: high liquidity and rate of return, exemption from corporate income tax and, finally, a regular dividend of up to 90-100 percent of profit.

However, so far, this form of investment has not been regulated by the Polish law. In October 2016, the Polish government published a draft of a new act on real estate investment trusts (in Polish: *spółka rynku wynajmu nieruchomości*).

According to the draft regulation, a REIT must be a public company listed on the Warsaw Stock Exchange, created for an indefinite period of time. Its share capital

must be at least PLN 60 million. At least 70% of its asset value must be comprised of real properties or shares in other REITs or its special-purpose vehicles, and consequently at least 70% of its net sale revenues must be gained from the lease of at least three real properties or the sale of real properties.

It should be noted that under the proposed regulation, a REIT most probably will not be able to invest in undeveloped real estate or in residential assets.

Another important provision is that at least 90% of REIT's profit must be paid out as annual dividends to its shareholders - unless the shareholders decide to allocate it for re-investment on the real estate market. Finally, a REIT's liabilities may not exceed 70% of its assets.

The Polish government expected the new law to enter into force on 1 January 2017, but the works on new regulation were delayed. According to the latest informations, the government considers allowing investment in housing real estate by REITs. Further work on this draft law should be closely monitored by the investors.

Tax remarks

According to the bill, a REIT is exempt from CIT on income from the lease and sale of real estate as well as sale of shares of other REITs and so called real estate subsidiaries (that must also meet certain criteria). Real estate subsidiaries that meet criteria and are 95% held by REITs can also enjoy a tax exemption on certain real estate related sources of income.

2.2.7 Public-private partnership

General remarks

Public-private partnership (hereinafter referred to as PPP) is one of the rising forms of cooperation between public authorities and the private sector. It allows for an increase in the efficiency of public services through the use of private sector experience and for the sharing of risk between public and private entities.

PPP enables a mutual advantage for the public and private sector - for public entities it guarantees an additional source of capital and as a consequence provides the public sector - with funds to allocate for other purposes. On the other hand, the public sector may provide to private investors the long-term certainty of cash flows from public sources.

In Polish law the legal framework for PPP is established by two acts that regulate the cooperation between

public entities and private partners:

- ▶ the Act of 19 December 2008 on Public-Private Partnership, hereinafter referred to as the Act on Public-Private Partnership,
- ▶ the Act of 21 October 2016 on Concession for Works and Services, hereinafter referred to as the Act on Concessions, which has replaced the previous Act of 9 January 2009 on Concession for Works and Services.

The main similarities between the Act on Public-Private Partnership and the Act on Concessions are as follows:

- ▶ cooperation between a public and private partner,
- ▶ private partners receive payments for the service rendered,
- ▶ constitute a special form of tender agreements.

Selection of the private partner

The Act on Public-Private Partnership basically distinguishes two ways of selecting the private partner. The ways of selection depend on the type of the private partner's remuneration and are as follows:

- ▶ If the remuneration of the private partner is represented by the right to exploit the work or services that are the subject of the contract or in that right together with payment selection of the private partner shall be done applying the Act on Concessions subject to provisions of the Act on Public-Private Partnership.
- ▶ In other cases, the selection of the private partner shall be done applying the provisions of the Act of January 29, 2004 on Public Procurement Law (hereinafter referred to as Public Procurement Law) subject to provisions of the Act on Public-Private Partnership.

In cases where the Act on Concessions and Public Procurement Law do not apply, the selection of the private partner is made in a way that ensures the maintenance of fair and free competition, as well as the principles of equal treatment, transparency and proportionality. If the public partner brings in real estate as its own contribution, the provisions of the Act of August 21, 1997 on the Property Management

(hereinafter referred to as the Act on Property Management) must be taken into account.

Implementation of PPP

Pursuant to the Act on Public-Private Partnership public and private entities conclude an agreement under which the private partner commits itself to implement the project at an agreed remuneration and to cover in whole or in part the expenditures for project implementation, or cover them through a third party, while the public entity commits itself to collaborate for the purpose of achievement of the project goal, in particular by making its own contribution. The PPP contract can also provide that for the purpose of its performance, the public entity and the private partner shall establish a company, a limited partnership or a partnership limited by shares.

Financial restrictions

The total joint amount up to which bodies of government administration can contract financial liabilities on the basis of contracts of PPP in a given year is specified in the Budget Act.

However, as a rule, the financing of a project from the State budget to the amount exceeding PLN 100 million requires a consent issued by the minister responsible for public finance. When issuing the consent the minister responsible for public finance shall consider the influence of the planned budget expenditures on the safety of public finance.

The concession contract - legal basics

The Act on Concessions specifies the rules and procedures for contracting concessions for works or services and the legal protection measures.

The duration of a concession contract should take into account the recovery of the concessionaire's expenditure incurred with reference to the performance of the concession. A concession contract is concluding for a limited period.

The concessionaire under the concession signed with the concession-granting authority is obliged to perform the subject of concession for remuneration, which constitutes in case of:

- ▶ the concession for works - exclusively the right to exploit the works that are the subject of the contract or in that right together with payment by concession-granting authority;
- ▶ the concession for services - exclusively the right to exploit the services that are the subject of the contract or in that right together with payment by concession-granting authority.



2.3. Real estate financing

2.3.1. Modes of financing the SPVs / investments

The most important thing in starting investments, is to provide financing for the SPVs, so they can operate and acquire real property.

There are several methods of financing the company, some funds can be received from outside, but some may come from the capital group - e.g. from the parent company. In many cases both solutions are possible.

Loan and credit agreement

By loan agreement a lender undertakes to transfer the ownership of a certain amount of money or goods to a borrower, while a borrower undertakes to return the same amount of money or the same amount of goods of the same kind and the same quality. Loans can be granted by any entity / person and may be relatively freely regulated by the parties.

A credit agreement is a specific kind of external financing, which is regulated by the Banking Law of 29 August 1997 and can be granted only by banks. By a credit agreement a bank agrees to provide a specific amount of money for a specific purpose and time, and the borrower agrees to use the credit for its intended

purpose, and pay back the amount of credit along with due reward in the form of bank interest.

On the financial market there is a wide choice of bank credits and their price depends on various factors as: duration, securities available, financial condition of the borrower. Additionally, banks may charge the borrower a preparation fee for all work connected with the preparation of the credit.

Banks also generally require securities for the credits. Among others, the most popular are:

- ▶ mortgages;
- ▶ share pledges;
- ▶ asset and bank account pledges;
- ▶ powers of attorney to bank accounts;
- ▶ security assignments of receivables of the borrower;
- ▶ submissions to execution;
- ▶ subordination agreements.

A mortgage is the common form of security required by Polish banks - especially required in real estate financing transactions.

Mortgage shall be defined as a right, under which the lender (creditor) may satisfy his claims from the property, regardless who is the current owner of the property, and with priority over other personal creditors of the borrower, whose credits are not secured with mortgage.

A mortgage becomes effective after entering in the Land and Mortgage Register. The entry takes effect at the date of filing, so even though the registration may take

several months, market practice is such that banks pay out the amount of the credit upon receipt of confirmation of filing of the application for registration.

A mortgage is a very secure solution for the bank, as in the case of the debtor not being able to pay off his debt, the real property may be sold in a public auction and thus, the bank may retrieve the whole amount of debt.

Shareholder's loan

A loan from shareholders has two important advantages over the bank loan. First, it is in general a cheaper solution and what is more, it does not bare the risk of enforcement in case of difficult financial situation of the borrower.

It is important to mention the specific rules resulting from art. 14 § 3 of the Commercial Companies Code, which provides that shareholder's claim resulting from a loan shall be considered to be his contribution to the company in case of declaration of bankruptcy within two years from the date of the loan agreement. However, the above does not constitute an increase in the share capital of the company, and the contribution is treated as made on the supplementary capital. This provision is intended to protect creditors of the bankrupt company.

Bonds

Bonds can be issued by a joint-stock company, a limited liability company and a partnership limited by shares. Bonds can be defined as securities, which oblige the issuer (the company) to give certain benefits in cash or in kind to the bondholder

(the buyer of the bonds). Companies can issue registered or bearer bonds.

The advantage of this form of financing is the ability to fairly freely determine the benefits that are associated with bonds. The construction of the security does not have to be limited to a simple financial benefit in the form of repayment of the bonds plus interest representing an income of the bondholder. While issuing bonds, the company is free to formulate the gratification to be provided to bondholders, such as the possibility of participating in profits of the company, or the conversion of bonds into shares.

The bonds may be distributed on an open market, in search for an outside financing, or serve as a mode to transfer funds from another related company. It should be noted that there are several companies in the real estate sector listed on the Polish bonds' open market.

In the case of SPVs which aim to obtain financing from the shareholders, the gratification (a mutual benefit) to the parent company as a bondholder will be of secondary importance. A practical solution is that if the SPV generate future earnings from real property, bonds could entitle bondholders to participate in the profit. Due to the high degree of freedom in the framework of this instrument, it is very recommended as an optimal way to bring the funds downwards.

We would like to note, however, that the issuing of bonds creates additional obligations for the bond issuer, related to providing data to assess the financial condition of that entity. Additionally, if the

issuer operates for more than a year, it is required to provide financial statements prepared as at the balance sheet date, no earlier than 15 months before the date of the publication of the terms of issuing the bonds, along with the auditor's opinion.

Promissory notes

In order to obtain financing SPVs may issue promissory notes.

A promissory note may include a deferred payment date. It should have a clearly defined due date, in the form of a calendar date. There are exemptions from this rule - e.g. an 'a vista' promissory note - which provides that the payment is made on demand from the payee or within a certain period after the demand. Additionally, an 'in blanco' promissory note allows a payee to fill in (at its own discretion) - the conditions of such promissory note (e.g. date of payment) within the scope foreseen by a mutual agreement.

The obligation from the promissory note does not have to be accompanied by any other legal relationship that it secures. It means that the holder has an unquestionable claim from promissory note, even if, for example, promissory note liability was not based on any other particular obligations - such as loans.

Similarly as in the case of the loan agreement, the issuer of a promissory note becomes a debtor. With the use of a promissory note, SPVs can easily obtain funds from the parent company in a less formal, quicker way and easily settle the debt in any suitable timeframes.

Increase of share capital

Raising capital is a common way of financing companies. It can be carried by increasing the nominal value of the shares existing or creating new ones; both ways lead to an increase of the share capital.

This process is associated with either changes in articles of association (a formal mode that requires filing the changes in the articles of association with the National Court Register) or an increase based on the current provisions of the articles of association (informal mode). The aim is to change the capital structure of the company by defining the share capital at a higher than current level. To cover the increase of the share capital, the funds may be paid in cash or in-kind contributions can be made.

It should be noted that the share capital increase needs some additional expenses. These include the fee for changing an entry in the National Court Register (ca. EUR 60), a fee for the notification in the Court and Economic Monitor (ca. EUR 25), notary fee for the minutes documenting the capital increase and for the preparation of a deed containing a statement of acquisition of shares in the full amount (notary fees depend on the value of increase and are limited by legal provisions).

The capital increase is a more formal process in comparison to the additional contributions (referred to below) and loans, but the advantage of this form of financing is the ability to contribute in various forms, such as cash or in-kind.

A significant drawback of this method of financing SPVs is relatively difficult process of withdrawing the invested capital.

This is carried through the reduction of share capital (Articles 263 - 265 of the Commercial Companies Code), which involves again additional costs (notification, registration) and is time-consuming (e.g. includes three months for objection to the reduction that can be brought by creditors).

Additional contributions

This method of financing is provided by the Commercial Companies Code, but it is applicable only to the limited liability company. According to the provisions, the articles of association of the company may require the payments (additional contributions) from the shareholders in a specific amount paid by the shareholders in proportion to their shares. In fact, it is worth noting that partnership agreements can also oblige the partners to additional payments - such a solution is possible based on the freedom of contract principle.

Payments of additional contributions in a limited liability company do not affect the value of shares in the share capital of the company, and therefore the share capital of the company remains unchanged after the additional contributions. The payments increase the company's own funds, which are thus quite freely allocated for the specific need, and this is certainly beneficial for the SPV. The amount and timing of payments is decided by the shareholders' meeting.

As mentioned above, the general obligation to additional contributions has to be stipulated in the articles of association (if such articles do not contain such provisions, it would be necessary to amend them, as otherwise additional contributions

are not possible). However, it is not enough to create an actual obligation for the shareholders to make contributions. A resolution of the shareholder's meeting taken by an absolute majority of votes is required. After this step is complete, the actual obligation arises.

Pursuant to the provisions of the Commercial Companies Code, the additional contributions may be refunded, provided that funds gathered from those contributions are no longer required to cover the losses reported in the financial statements, and not earlier than one month after notice in writing, announcing the intended refund. Rules on the refund may be differently regulated by the articles of association, which means that this instrument is relatively flexible. Shareholders may in fact decide, contrary to the provisions of the Commercial Companies Code, that additional contribution may be refunded, even if the company's financial statements show a loss, in less than a month from the date of publication, or even without the need to announce the refund.

Additional contributions are always made in cash and cannot be fulfilled by providing the company with non-cash benefits. Payments can be used for different purposes, and the applicable regulations do not contain restrictions in this regard.

2.3.2. Tax implications

Equity financing

When a Polish company is financed through equity, the funds required for the investment are received in exchange for

the shares in the company. Equity financing is generally subject to a 0.5% civil law transaction tax with certain exceptions for restructuring and reorganization transactions. Contributions to a reserve capital (share premium) should not be subject to civil law transaction tax.

Generally, for Polish corporate income tax purposes, a contribution in kind (except for the contribution in kind of a business or an organized part thereof) is a taxable event for the company making the contribution, and is subject to the standard corporate income tax rate, currently 19%. However, foreign entities may be exempt from Polish taxation under the relevant tax treaty.

Shares in the company give shareholders the right to control the company and the right to financial benefits from the company. The income of the company generated through its operations is subject to corporate income tax. Any after-tax profits can be distributed to shareholders in the form of dividends. The shareholders are not only entitled to dividends but also to a share of any proceeds upon liquidation in proportion to their shareholdings.

Additional payments are contributions made by the shareholder(s) of a limited liability company where no shares are issued in exchange. Usually these payments are made when the company has made a financial loss and its level of equity is lower than the nominal value of its issued share capital. If the company's articles of association allow such additional payments to be made, and later repaid to the shareholders, then receipt and repayment is not subject to income taxation. Compensation for making the additional

payments may be paid to the shareholders in the form of interest payable by the company. When paid, such interest should be treated as a non-tax deductible cost.

Taxation of dividends

Dividends distributed by a Polish company to a foreign owner are generally subject to a 19% withholding tax in Poland. This tax must be withheld by the company distributing the dividend on the dividend payment date, and paid to the tax office before the seventh day of the month following the month in which the tax was withheld. The 19% rate can be reduced (to a lower percentage) if the recipient is a tax resident in a country with which Poland has concluded a tax treaty. Poland has concluded many tax treaties and there are just as many ways in which the Polish withholding tax can be reduced. Usually the treaty withholding tax rates on dividends vary between 5% and 15%.

Appropriate tax planning in the initial phase of the investment should be carried out to determine in which country the recipient of the dividends should be located in order to reduce or avoid the international double taxation of dividends (see the Appendix at the end of this book for a list of withholding tax rates under Poland's various tax treaties). Double taxation occurs when the Polish withholding tax cannot be reduced to 0% by virtue of a treaty and the dividend is also subject to income tax in the country where the recipient is a tax resident. The treaties or unilateral tax rules in most countries provide a credit system to avoid such double taxation.

In addition, since the implementation of the EU Parent-Subsidiary Directive, an exemption on dividends paid to companies from other EEA countries and Switzerland applies. This is provided that the entity receiving the dividend is taxed in another EEA country (or in Switzerland) on its worldwide income (and is not subject to tax exemption on its total income) and has held or will hold at least 10% (in the case of a company resident for tax purposes in Switzerland, at least 25%) of the shares in the Polish company paying the dividend for at least two years. This condition can be also met prospectively, i.e. after the actual dividend payment. If the condition to hold the amount of shares for an uninterrupted period of two years is not satisfied, withholding tax (as a rule at 19%) together with the penalty interest for late payment will be due.

Dividends paid (or received) as of 1 January 2016 would not benefit from the EU Parent-Subsidiary Directive based tax exemption if dividends are connected with an agreement, a transaction, or a legal action or a series of related legal actions, where the main or one of the main purposes was benefitting from these tax exemptions and such transactions or legal actions do not reflect the economic reality. For the purpose of the above rule, it is considered that a transaction or a legal action does not reflect the economic reality if it is not performed for justified economic reasons, but results, in particular, in transferring the ownership of shares of a dividend paying entity or in earning revenue by that entity which is then paid as a dividend. As there is no well-grounded practice regarding actual application of similar provisions, details of

each structure should be analyzed carefully to determine and address potential issues with taxation of dividends.

It is up to the company paying the dividend to determine the applicable withholding tax rate. The Polish withholding tax system is not “a pay and refund system”. The Polish company distributing the dividend can be held liable for mistakes, e.g. if it applies an incorrect tax rate. A certificate issued by a foreign local tax office confirming the tax residence of the foreign shareholder receiving dividend payments from Poland must be obtained by the Polish company in order to allow application of the lower withholding tax rate or exemption. An additional requirement is that the Polish entity paying dividends should also hold a written confirmation from the recipient that the latter does not benefit from tax exemption on its worldwide income, if the exemption is to apply.

Dividends paid between companies which are resident in Poland for tax purposes are exempt from withholding tax provided that the dividend recipient has held or will hold (on or after the day when the dividend is received) at least 10% of shares in the dividend paying company for at least two years. If the above conditions are not met, non-creditable withholding tax is levied on dividends at the rate of 19%.

Redemption of shares and liquidation distributions

The redemption of shares and the return of equity to shareholders are permitted under Polish law. The formal procedure is

time-consuming and usually takes several months.

Standard, voluntary redemption of shares is subject to the same tax treatment as disposal of shares. It means that as a rule such redemption will be subject to tax in Poland, unless relevant double tax treaty provides for tax exemption.

Other than voluntary redemption of shares (compulsory redemption of shares) as well as liquidation is taxed in the same way as dividends and is subject to the applicable withholding tax (taking into consideration the appropriate tax treaty) or withholding tax exemption based on the Polish CIT law provisions implementing the EU Parent-Subsidiary Directive.

As of 1 January 2015 the Polish CIT provisions explicitly state that in case of in kind remuneration for settling the liability (e.g. upon shares redemption or in kind dividend payment) the value of liability settled in such a way constitutes a taxable revenue of the paying entity. This applies respectively also to look through entities. Liquidation proceeds are also likely to share this treatment, even though liquidation is not explicitly mentioned in this provision.

Debt Financing (Loans): civil law transaction tax

Loans are generally subject to civil law transaction tax at the level of 2% of the loan principal. The tax must be paid within 14 days of the date of the loan agreement, and the tax liability rests with the borrower.

Nevertheless, the following types of loans are exempt from taxation:

- ▶ loans granted by shareholders to a limited liability company or joint stock company;
- ▶ loans granted by foreign entities which are engaged in credit and financing activities (such as group treasury companies);
- ▶ loans recognized as an activity subject to Polish or foreign VAT (e.g. bank loans);
- ▶ financing granted as a part of business activity is recognized as a financial service specifically exempt from VAT; therefore, no civil law transaction tax applies;
- ▶ Bonds issuance is generally not subject to civil law transaction tax.

Withholding tax on interest

Generally, interest paid from Poland to a foreign lender is subject to a 20% withholding tax. This rate may be reduced or eliminated based on relevant tax treaty or Polish implementation of EU Interest - Royalty Directive. Please see Appendix for a list of withholding tax rates under Poland's various tax treaties. Under the tax treaties, it is generally stipulated that if withholding tax is payable it can be credited against the corporate income tax of the foreign lender. As in the case of dividends, in order to apply a treaty rate, a certificate confirming the tax residence of the foreign lender must be obtained.

After joining the European Union, Poland implemented the EU Directive 2003/49/EC on the common system of taxation applicable to interest and royalty payments made between associated companies of

different Member States. One of the main purposes of the Directive is to abolish withholding tax imposed by the country from which payments of interest and royalties originate when such payments are made between "qualifying EU entities", i.e. payments made between parent and subsidiary, subsidiary and parent and between direct sister companies (in all cases a minimum 25% stake, 2 year holding period is required). As a result of that, a withholding tax exemption on interest payments made between parent and subsidiary, subsidiary and parent, and between direct sister companies (in all cases a minimum 25% stake and 2 year holding period is required) is currently available. The 2-year holding period condition can be also met prospectively, i.e. after the actual interest payment. If the condition to hold shares for an uninterrupted period of 2 years is not satisfied, outstanding withholding tax (as a rule 20%) together with the penalty interest for late payment will be due. Penalty interest is charged from the day following that the day on which the above period expires.

In order to benefit from that favorable treatment the payer should hold recipient's certificate of tax residence. An additional requirement is that the payer should also hold the recipient's confirmation that the recipient does not benefit from the tax exemption on its worldwide income. The recipient should also be considered a beneficial owner of the payment. Withholding tax exemption only applies to arm's length level of interest.

Tax deductibility of interest paid on loans

Generally, interest on loans is deductible for tax purposes when actually paid or compounded (added to the principal so that it constitutes a basis for new interest calculation), i.e. accrued interest may not be treated as a tax deductible cost until it is actually paid or compounded.

In general, it should be possible to treat the interest on loans drawn to acquire shares in a Polish company as tax deductible. Careful tax planning is, however, always required in all “debt push down” structures.

It is important to note that interest accrued during the development of real estate on the part of the loan used to finance that development is not directly deductible.

The cost of such interest should be added to the initial value of the newly developed real estate (i.e. the new building) in order to increase the basis of its future depreciation for tax purposes. However, this rule applies only to real estate which is the company's own fixed asset. It does not apply to projects constructed for resale (e.g. residential projects). In such cases, based on the practice of the Polish tax authorities interest may be treated as tax deductible under the general rules (although the practice was changing in this respect over the years).

Level of interest

The Polish tax authorities are usually interested in the conditions of loan agreements concluded between related parties. These conditions should be the same as, or comparable to, the sort of

financing conditions which non-related parties would agree upon, in accordance with “the arm's length principle”. Too high an interest rate could lead to an adjustment of the Polish borrower's taxable income. In addition, other conditions in the loan agreement which are unjustifiable or unfavorable to the borrower could result in further tax adjustments. According to regulations governing the documentation of transactions between related parties, taxpayers are required to prepare specific transfer pricing documentation or risk paying a 50% rate on any additional taxable income assessed (please note that starting 2017 there was a change to the transfer pricing documentation requirements increasing the reporting obligations substantially).

Restrictions on the tax deductibility of interest paid on loans

The Polish thin capitalization rules have been significantly amended as of 1 January 2015.

According to the transitional provisions new rules apply to interest paid on loans with respect to which funds were made available to the borrower as of 1 January 2015 or later. Therefore, as regards interest paid on loans with respect to which funds were made available to the borrower before that date - old rules apply.

Old rules

The Polish old thin capitalization rules restrict the tax deductibility of interest on two types of loans (credits) granted by certain entities:

- ▶ loans (credits) granted to the taxpaying company by its shareholder holding not less than 25% of the voting rights in the company or loans (credits) from shareholders holding jointly not less than 25% of the voting rights in the company (“mother company” loans);
- ▶ loans (credits) granted to the taxpaying company by another company, if the same shareholder holds not less than 25% of the voting rights in each of these companies (“sister company” loans);

where the debt to equity ratio (the ratio of the value of the debt payable to certain entities to the value of the share capital (see below for details) exceeds 3:1 at the date of the interest payment. Interest on the loans (credits) exceeding the ratio is not tax deductible (the term “loans (credits)” also covers bonds and deposits).

For the purposes of the calculation of the debt to equity ratio, the debt includes:

- ▶ in the case of “mother company” loans:
- ▶ debt payable to direct shareholder(s) holding at least 25% of the voting rights in the interest paying company; and
- ▶ debt payable to entities holding at least 25% of the voting rights in the above mentioned direct shareholders.
- ▶ in the case of “sister company” loans:
 - ▶ debt payable to direct shareholder(s) holding at least 25% of the voting rights in the interest paying company; and
 - ▶ debt payable to entities holding at least 25% of the voting rights in the above mentioned direct shareholders; and

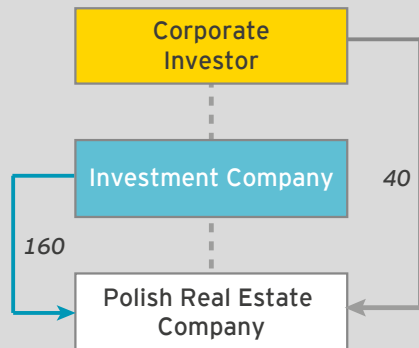
- ▶ debt payable to the entity granting the loan (credit).

In both cases “equity” includes the share capital stated in the company’s deed of association and equal to the nominal value of the shares issued, excluding:

- ▶ capital not paid in full;
- ▶ capital converted from shareholder loans (credits) and/or related interest;
- ▶ capital formed by a contribution in kind, which is an intangible asset not subject to depreciation (e.g. goodwill).

Examples of how the old thin capitalization rules work:

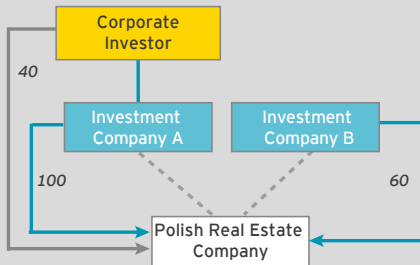
Example 1



Assumption:

Polish Real Estate Company 's (PREC)	
Nominal share capital is:	50
Debt limit is:	150
Total loans:	200
Part of loans exceeding threshold	50

Example 2



Assumption:

PREC 's nominal share capital is	50
Debt limit is	150
Total loans	200
Part of loans exceeding threshold	50

For sister company loan:

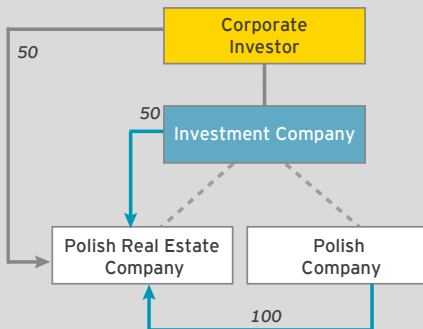
Total loans	200
Part of loans exceeding threshold	50

- - - = minimal 25% voting right relationship
- = loans subject to thin-cap
- = loans qualifying for calculation of debt limit

New rules

The new rules restrict deductibility of interest on a broader range of loans than the rules in force until the end of 2014. As of 1 January 2015, generally interest on all intra-group loans (also those from indirectly related entities) may be subject to deductibility restriction.

Example 3



Assumption:

PREC's nominal share capital is	50
Debt limit is	150

For shareholder loan:

Total loans	100
Loans exceeding threshold	0

Under the new thin capitalization rules, if the value of debt owed to specified related parties exceeds equity (net assets) of the borrower (1:1 debt to equity ratio), part (calculated based on a proportion) of interest paid on a loan from a related party is not deductible for tax purposes. For the purposes of these rules, equity is determined on the last day of the month preceding the month of interest payment without taking into account revaluation reserve and subordinated loans. The value of equity is further decreased by the value of the share capital that was not actually transferred to this capital or was covered with shareholder's loans' receivables and intangibles that are not subject to amortization.

Debt taken for the debt to equity ratio calculation is decreased by loans granted by the borrower to the entities, loans from which would be subject to thin capitalization

restrictions (only net debt is taken into account).

The definition of a loan covers any form of debt financing, including the issuance of bonds, credits and bank and nonbank deposits. The definition does not cover derivatives.

The thin-capitalization rules apply to interest on loans granted by Polish and foreign qualified entities. They cover the following loans:

- ▶ loans granted by an entity that holds directly or indirectly at least 25% of the voting rights in the borrower,
- ▶ loans granted jointly by entities that jointly directly or indirectly hold at least 25% of the voting rights in the borrower,
- ▶ loans granted by one company to another company if the same entity holds directly or indirectly at least 25% of the voting rights in both the lender and the borrower.

For general partners in a limited joint-stock partnership, the conditions concerning the minimum share (voting rights) are fulfilled, regardless of the general partner's share.

As of 1 January 2015 the taxpayers have also a right to opt for a new alternative thin-capitalization calculation method. If chosen by the taxpayer, the abovementioned method applies to interest paid to both related and unrelated parties. The recognition of such interest cost for tax purposes is limited to the amount of the National Bank of Poland's reference rate plus 1.25 percentage point and the tax value of assets within the meaning of Accounting Act (excluding intangible assets).

The value of interest recognized for tax purposes cannot be higher than the value corresponding to 50% of the profit from operating activities (this condition does not concern, generally speaking, banks and financial institutions).

Interest not deducted in a given tax year can be deducted in the following consecutive 5 tax years. If a taxpayer decides to use this method it should be used for at least 3 consecutive tax years.

To be entitled to apply the above rules, taxpayers are generally obliged to file relevant notification with the tax authorities not later than till the end of first month of their new tax year.

Foreign currency financing

As the foreign currency liabilities are reported for accounting purposes in PLN, foreign exchange differences (gains or losses) accrue in the accounting books of the Polish company. Foreign exchange differences accrue also on loan liabilities in PLN denominated in foreign currencies. These gains or losses are recognized for tax purposes only when realized, i.e. when the related liability is paid or set off (or when the due interest is compounded). However, audited companies can report foreign exchange gains or losses in accordance with accounting standards upon notifying the tax authorities, provided that such reporting in accordance with accounting standards will continue for a period of at least three tax years.



2.4. Acquisition of real estate - asset deal and share deal

2.4.1. General remarks

As many other jurisdictions, Polish law provides different methods of acquiring real estate by an investor, among which an asset deal and a share deal are the two most commonly used.

Both methods bear various legal and tax consequences which have to be considered in any given case and therefore there is no generally accepted rule when a share deal or an asset deal shall be applicable. The interests of the seller and the buyer, the particulars of the case and the power of each party to negotiate have to be considered while choosing one of these two forms.

In practice, if a share transaction is properly structured, this can be the most tax efficient disposal method to use. In a well-organized corporate structure, taxes on capital gains can be entirely avoided or in some cases deferred.

From the buyer's perspective, it is usually more tax efficient to buy the property directly than to buy shares in a company holding the property. The buyer can then depreciate as much as the real market value of the building for tax purposes. On the other hand, if the shares are bought at a higher price than the book value of the company's

assets, goodwill paid in return for the shares can be recognized for accounting purposes. Unfortunately, such goodwill cannot be amortized for tax purposes. Furthermore, a company owning real estate with a low book value has a deferred tax exposure with respect to any future capital gains made on the disposal of that real estate. Thus, the buyer of shares will most likely try to negotiate a discount on the transaction price to eliminate this negative tax aspect.

The purpose of this chapter is to outline the main features of these two types of real estate transaction from

both the legal and tax perspectives, and to examine the consequences of each structure.

2.4.2. Legal aspects

Definition of a share deal and asset deal

Despite the fact that the share deal and asset deal are equally popular, their object and manner of conducting are different. The key differences between these two methods of acquisition concern the extension and nature of purchased items and are presented below.

- ▶ A share deal is defined as a transaction involving acquisition of shares in a company as a result of which the buyer purchases the whole or a part of the shares in the share capital of the company (i.e. the target company). Thus, in such transaction, the purchaser becomes the owner of the shares and does not obtain any direct rights to

the assets (i.e. for instance real estate) which remain the property of the target company. Since in this transaction an investor purchases shares in the target company, it also acquires the risk related to the liabilities of this company (e.g. undisclosed liabilities, tax liabilities). Thus, an extensive due diligence of the target company preceding the purchase of shares is required and recommendable.

- ▶ An asset deal is where the purchaser acquires all or some of the assets of the company. Unlike a share deal, in an asset deal it is possible to divide out certain elements, such as real estate and acquire only those parts. Therefore, in an asset deal, an investor purchases the property itself and at the end owns the assets of the target company only. Since in case of this transaction it is not necessary to examine the title to the company's shares or the company's corporate structure, the due diligence preceding an asset deal is generally shorter and less extensive in comparison to the due diligence preceding a share deal. However, the assets being acquired (such as real estate) may require a more detailed analysis.

One of the most significant differences between these two types of transactions is the guarantee of the validity of the purchased title. Pursuant to the Polish law, in the asset deal the investor's acquisition of the land from a title-holder who is registered in the Land and Mortgage Register guarantees the validity of the purchased title. This applies only when the purchaser acted in good faith (i.e. one does

not act in good faith if knew, or should have known, that the legal status of the property is different than the one resulting from the register). Such a guarantee does not apply to the purchase under a share deal, in which the validity of the company's title to the property is supported by the seller's representations and warranties that are included in the share purchase agreement.

Representations and warranties

In order to secure the purchaser's interest extensive representations, warranties and related indemnities should be included in the share purchase agreement. This is usually one of the most important parts of the agreement subject to extensive negotiations. The scope of warranties and representations as well as detailed legal consequences of their breach have to be regulated in the sale agreement in details as Polish law does not provide for a specific legal regulation of this issue.

Please note that representations, warranties and accompanying indemnities included in the asset sale agreement are usually less extensive than in a share purchase agreement.

- ▶ In an asset deal, the seller's representations and warranties concern, in particular, the validity of the seller's title to the real estate, the information regarding encumbrances (if any), the statement confirming that the development has been carried out in accordance with the binding provisions of law and technical plans and that relevant permits are valid.
- ▶ The seller's representations and warranties in a share deal usually

include the representations and warranties typical for an asset deal regarding real estate, but also extensive representations and warranties relating to all aspects of the company's activity: in particular tax, employment, accounting, corporate and contractual matters.

It is recommended that the sale agreement provides for specific instruments supporting the enforceability of the indemnities securing the representations and warranties. In market practice, part of the purchase price is retained in an escrow account or a bank guarantee is obtained from the seller.

Types of agreements

There is a number of documents related to both transactions. Usually, in order to clearly state the intentions, goals to achieve during negotiations and the key principles of the transaction, the parties sign a letter of intent prior to signing the real estate purchase agreement. Such letter is a good solution for parties who intend to conduct multi-stage negotiations and to those who would like to agree on minor details of the transaction. In such a case, parties may determine the time frame of the negotiations and the moment of their completion, as well as all issues that have to be discussed.

Pursuant to the Polish law, the legal title to the purchased property or shares of a company holding the real estate is transferred on the basis of an agreement executed in the relevant form.

In case when circumstances surrounding the transaction are straightforward, such

agreement may be executed immediately, without undertaking any additional actions. However, in some cases purchase of a real estate or shares may be effected by executing two separate agreements, i.e. a preliminary agreement followed by a final agreement. The transaction structured in two separate stages is especially relevant when there is a need to obtain consents for the transaction or to fulfill certain conditions. The Parties usually conclude such an agreement once a letter of intent has been drawn up and before the final purchase agreement has been executed. In order to be valid, the preliminary agreement must include the essential content of the final agreement (i.e. the subject of the sale and the purchase price). In practice, the preliminary agreement regulates all issues related to the real property or shares.

Please note that, in general, pursuant to the Polish law, each transfer of property is registered, as the mortgage register system in Poland aims to have all properties registered. However, the function of such obligation is merely informative and does not determine the transfer of the ownership rights to the purchased property. Nevertheless, certain property rights, such as the perpetual usufruct right can only be transferred if there is an entry in the Land and Mortgage Register made. Thus, the agreement is not sufficient to transfer the perpetual usufruct right and the date of the above entry determines the date of the transfer.

The transfer of the real estate must be unconditional which means that before it takes place, all conditions foreseen by

a preliminary agreement need to be fulfilled or the obligation to satisfy these conditions needs to be disclaimed. In that case, the execution of an unconditional agreement completes the transaction.

Transfer of the property-related rights

In many transactions, it is necessary to obtain various types of consents or permits regarding the transfer of the rights related to the property, the lack of which may affect the legal effect of the entire transaction.

In the share deal the purchaser does not obtain any direct rights to the assets as these remain the property of the target company. Consequently, the property-related rights and obligations (such as leases, property management agreements, warranty claims under construction contracts and contracts of insurance, permits) remain with the corporate entity holding the real estate and no formal assignment is required.

In the asset deal, the property-related rights and obligations are not automatically transferred as a result of the sale agreement. In case of contracts as for the formal assignment it is, in general, necessary to obtain the consent of the other party of each contract. In case of licenses, decisions etc. it should be analyzed case by case what actions have to be undertaken in order to transfer them to the purchaser. This means that the ability to assign the property-related rights or assuming the obligations is examined individually, in light of specific regulations

or contractual provisions, which may prevent or restrict transferability.

Therefore, a share deal is a type of transaction usually considered by investors when the target company conducts regulated activity as all permits required for its operation stay in the company.

Formalities

► **Purchase Agreement content**

Pursuant to the Polish law, the asset purchase agreement and the share purchase agreement should describe at least such elements as the object of the sale and the price. In practice, the agreements are complex and provide for the following main information:

- a) the detailed description of the property or the shares that are subject of the transaction (the sale object);
- b) the price and mechanism of payment (including down payment if any, as well as the price adjustment mechanism);
- c) security instruments (to be determined by the parties, e.g. a mortgage over the property, a registered pledge over the shares, the bank guarantee);
- d) representations, warranties and indemnities;
- e) other matters such as in case of an asset deal the transfer of rights and obligations related to the real estate, the method of resolving a dispute etc.

► **Other requirements**

The requirements regarding form, language and governing law of the agreement depend on whether we deal with an asset or a share deal transaction.

The form of a notarial deed is required for the execution of a real estate purchase agreement, while such requirement is not necessary for the execution of the share purchase agreement. The share purchase agreement requires the notarial certification of the signatures of the parties.

Considering the above, since the real estate purchase agreement must be executed in a form of a notarial deed, it must be also concluded in Polish. By contrast, in a share deal a purchase agreement does not require the form of a notarial deed but just notarial certification of signatures and, therefore, it can be executed in a foreign language. However, the Polish commercial registry court that will register the transfer of shares may request a sworn translation of such agreement.

The real estate purchase agreement can be governed by Polish law only. Such requirement does not apply to the share purchase agreement which can be governed by a foreign law (provided that conclusion of the agreement is connected with the law of at least two different countries).

► **Costs**

Property purchase agreement requires the notarial deed form, which is subject to a notarial fee, depending on the value of the transaction, but not exceeding PLN 10,000 for each agreement. The fee for the certification of signatures is much lower and does not exceed the amount of PLN 300 for certification of each signature.

Merger control

Due diligence review preceding any asset or share deal should answer the question whether the legislation governing merger control will be applicable, in particular, whether a notification of the transaction to the Office of Competition and Consumer Protection is required. Should such notification be required, the closing of the transaction must be suspended until the permit of the Office of Competition and Consumer Protection is issued.

A notification on the planned transaction to the Office of Competition and Consumer Protection is required if any of the following conditions is met:

- the combined worldwide turnover of undertakings participating in the concentration in the financial year preceding the year of the notification exceeds the equivalent of EUR 1 billion, or
- the combined turnover of undertakings participating in the concentration in the territory of Poland in the financial year preceding the year of the notification exceeds the equivalent of EUR 50 million.

However, the Polish antitrust law provides for certain exceptions from the obligation of notification even if the above conditions are met, in particular, when the turnover of the undertaking over which the control is to be taken did not exceed in the territory of Poland in any of the two financial years preceding the notification, the equivalent of EUR 10 million; the concentration arises as an effect of insolvency proceedings, excluding the cases where the control is to be taken over by a competitor or a participant of the capital group to which the competitors of the to-be-taken undertaking belong; the concentration applies to undertakings participating in the same capital group.

The pre-emption rights

It may happen that the public authorities have a statutory preemptive right to real estate which is about to be sold. The right of pre-emption is a right to acquire the property before it can be purchased by any other person or entity. Where the real estate is subject to a right of pre-emption held by State Treasury or local authority, it may only be sold to a third party under the condition that the beneficiary of that right does not exercise it. If such a property is sold without observing this right, the sale is considered to be null and void.

The notary executing the conditional agreement will send a copy of it to the State Treasury or local authority, which may then exercise its preemptive right within one month of receiving the conditional agreement. If the public authority does not exercise its preemptive right within that period, the parties can conclude the final

agreement, which effects the unconditional transfer of the title to the real estate.

Restrictions in acquiring of real estate

As a general rule, foreigners (or Polish entities controlled by a foreigner) are required to obtain a special permit of the Minister of Internal Affairs for acquiring a real estate in Poland. The permit is necessary when acquiring ownership of real estate or perpetual usufruct on the basis of any legal event (e.g. purchase, in-kind contribution, merger with a Polish entity, taking up shares in Polish entities).

The permit is issued upon a written request of a foreigner, provided that:

- ▶ a foreigner's acquisition of real estate does not pose a threat to the State's defense, national security, public order and is not contrary to the social policy and public health considerations;
- ▶ the foreigner proves that there are circumstances confirming his bonds with Poland (i.e. for example the buyer has Polish origins or is conducting business or agricultural activities in the territory of Poland under the Polish law).

The Minister's decision concerning real estate acquisition should be issued within one month (two months in particularly difficult cases). The permit is valid for two years from the day of issuance.

The acquisition of real estate without a permit is invalid. A foreigner intending to acquire real estate in Poland may apply for a promise of the permit. The promise of the permit is valid for one year. During this

period a permit cannot be refused unless the actual circumstances pertinent to the decision have changed.

The above restrictions do not pertain to acquiring real estate or shares in companies by entities from European Union, European Economic Area or Switzerland (or Polish entities controlled by such).

On 1 May 2016, the previously existing obligation to obtain the permit for acquisition of agricultural or forest land by entities from EU, EEA or Switzerland was abolished.

In connection with the above, a new legislation restricting trade of agricultural land was passed and came into force as of 30 April 2016. The new regulation restricts trade of agricultural land for both Polish and foreign (EU and non-EU) entities.

Under the new law on shaping the agricultural system, agricultural land is the land used for agricultural purposes or land that may be used for such purposes, excluding land intended for other purposes in applicable local spatial development plans.

The new law provides for major restrictions in sale of agricultural land such as:

- ▶ 5 years moratorium on sale of agricultural land owned by the State Treasury (Agricultural Property Agency); the moratorium does not pertain i.a. to agricultural land of the area below 2 ha or lands designated for other purposes in the zoning decision, local spatial development plan or study, lands in special economic zones; the

land may also be sold upon obtaining Minister of Agriculture permit,

- ▶ agricultural land may be acquired only by individual farmers having agricultural education and residing in the same municipality where the land is located for at least 5 years,
- ▶ an obligation to obtain a permit of the Chairman of the Agricultural Property Agency for sale/acquisition of an agricultural land to/by persons other than individual farmers, including companies, under pain of invalidity,
- ▶ general prohibition on sale or transferring possession (e.g. under lease agreement) of an agricultural land within 10 years from its purchase; in ill-fated reasons a common court will be entitled to allow the sale,
- ▶ agricultural land acquired under Chairman of the Agricultural Property Agency consent within 10 years from its purchase; in case a sale or transfer of possession is necessary due to misfortune reasons being beyond the buyer's control, a common court is entitled to allow for the conclusion of the relevant agreement,
- ▶ Agricultural Property Agency possess a pre-emption right to agricultural land regardless of the area (previously this right applied only to areas of at least 5ha),
- ▶ Agricultural Property Agency was given a wider buyout right in case other acquisitions that acquisitions under sale agreement e.g. merger, division or transformation of a current owner (perpetual usufructuary) of the land,
- ▶ Agricultural Property Agency was given a right to buy of an agricultural land in case of partners change in partnerships,
- ▶ Agricultural Property Agency was given a pre-emption and buyout right to purchase shares in companies owning an agricultural land, e.g. in case of share purchase agreements or share swap (excluding shares in public listed companies).

Acquisition of real estate from public entities

In Poland, real estate is often acquired from the State or local authorities. Such type of acquisition is considered to be safe and an attractive alternative to acquisition of real estate from private owners. Nevertheless, in practice, acquisition of real estate from public entities is subject to additional specific requirements such as an obligation to dispose the land via public tenders.

An investor interested in acquiring real estate from the State or local authorities should ask the authorities for information on the contemplated property to be acquired. Unfortunately, it is not possible to purchase such real estate on the spot, as there is a special procedure of selling real estate held in public entities' possession. With only a few exceptions provided by the law (e.g. real estate being sold to its perpetual usufructuary), real estate held by the State or local authorities may be disposed by way of public tender, after a lengthy procedure is completed.

2.4.3. Tax implications

As mentioned above, real estate can be sold either through a direct sale of the property (an asset deal) or indirectly through a sale of the shares in the company owning the property (a share deal). These two types of transactions are afforded different treatment by the Polish tax regulations.

Asset deal

The revenues generated on the sale of real estate are subject to the standard taxation rules of Polish corporate income tax. Taxable revenues are reduced by the net book value of the property. Effectively, only the “capital gain” is taxed at the rate of 19%. The revenue from the sale of real estate must be valued at the price set in the sale contract. However, if the price differs substantially and without a justified reason from the market value of the real estate, the revenue may be assessed by the tax authorities according to the market value. This transaction price adjustment may be applied to transactions between related and unrelated entities. Adjustments trigger not only a higher tax burden but also penalty interest.

The Polish tax system does not include a replacement provision. Therefore, the corporate seller cannot defer taxation of a capital gain.

Costs incurred by the buyer for the acquisition of real estate: purchase price, transaction costs including advisory, civil law transaction tax - if applicable, financial costs accrued till the purchase, etc., form the initial value of the real estate and are recognized as tax deductible costs

through depreciation write-offs or upon sale. As the value of the land is not subject to depreciation, it is then important to determine the value of the land and the value of any buildings or structure separately.

VAT on the acquisition of real estate

The supply of buildings, infrastructure, or parts of buildings or infrastructure is generally VAT exempt, except for:

- ▶ the supply of a building, infrastructure or part of a building or infrastructure in the course of its first occupation or prior to it; and
- ▶ the supply of a building, infrastructure or part of a building or infrastructure made within two years of the first occupation;

in which cases the supply of buildings, infrastructure or parts of buildings or infrastructure are generally subject to VAT.

“First occupation” means handing over a building, infrastructure or part of a building or infrastructure within the context of the performance of VAT-able activities (subject to VAT or VAT exempt) to the first acquirer or user, after the:

- ▶ initial completion; or
- ▶ improvement (if the expenses incurred for the improvement constituted at least 30% of the initial value)

of that building, infrastructure or part of a building or infrastructure.

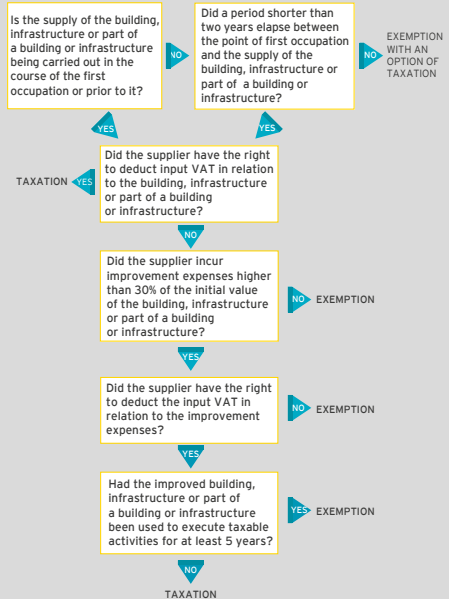
Taxpayers may choose not to apply the exemption and charge VAT if:

- ▶ both buyer and seller are VAT registered; and
- ▶ before the day of supply they submit the appropriate joint statement to the tax office of the purchaser.

The supply of buildings, infrastructure or parts of buildings or infrastructure which should be subject to VAT (i.e. supply in the course of first occupation or within two years of the first occupation) must be VAT exempt (no option to tax allowed) if:

- ▶ the seller was not entitled to deduct input VAT; and
- ▶ the seller did not incur improvement expenses on which he had right to deduct VAT, or such expenses did not exceed 30% of the initial value of the building, infrastructure or part of a building or infrastructure (unless the improved real estate was used for taxable activities for no less than 5 years).

The diagram below outlines VAT rules on the taxation of the supply of buildings, infrastructure or parts of buildings or infrastructure.



Generally, the VAT treatment of ownership title to land or a perpetual usufruct (RPU) over land follows the VAT treatment of the buildings and infrastructure developed on the land.

An exception to the above rule is when an RPU is acquired for the first time from the State or local authority, in which case, the RPU is always subject to 23% VAT, even though the buildings / infrastructure developed on the land may be exempt from VAT.

The supply of ownership title / RPU to undeveloped land qualified as land for development purposes is subject to 23% VAT (supply of agricultural land is as a rule exempt from VAT).

If subject to VAT, the supply of real estate is subject to 23% VAT. However, the supply of residential buildings and separate apartments is subject to a reduced 8% VAT, except for part of residential buildings whose usable floor space exceeds 300 m² and apartments whose usable floor space exceeds 150 m². In such a case only the part of residential building and/or apartment which fits within the above limits benefits from the 8% VAT rate, whereas the part exceeding the thresholds is subject to a standard 23% VAT rate. Depending on the legal case underlying the transaction, sale of a parking space sold jointly with the apartment but constituting a separate legal property, can be subject to a standard 23% VAT.

Starting 1 January 2014, as a rule, VAT tax point arises in the month of delivery of goods or rendering the services to the purchaser. The invoice should be issued by the seller no later than until the 15th day of the month following the month in which the goods were delivered or the services were rendered.

If the supply of real estate is VAT exempt, it is subject to civil law transaction tax payable by the buyer. The applicable rate is 2% of the market value of the real estate.

If the business of the Polish company or part of its business is sold as a going concern, the transaction falls outside the scope of VAT. The assets of the business or part thereof will be subject to civil law transaction tax payable by the buyer at the rate appropriate for a particular item (2% for land, buildings and other tangible property, 1% for intangibles, including any goodwill that would crystallize on

such transfer). Civil law transaction tax constitutes an additional cost of the transaction and is non-recoverable.

There has been some cases recently, when the tax authorities challenged the qualification of a real estate (shopping center) from an asset deal performed on piece-meal basis (which is subject to VAT) into a sale of a going concern (subject to civil law transaction tax), even when a tax ruling was obtained upfront. As there is a lot of uncertainty in this respect these days, a detailed analysis of each particular transaction is recommended.

Recoverability of input VAT

Input VAT is recoverable if the company performs or intends to perform activities in the future which are subject to VAT (e.g. lease of the commercial real estate). Input VAT will not be recoverable if the company performs or intends to perform activities in the future which are VAT exempt. If this is the case, the input VAT will increase the initial tax basis of the real estate.

For example, certain financial activities performed by banks, financial institutions and insurance companies are exempt from VAT: these institutions have no (or limited) output VAT and therefore they are not entitled to refunds or any other kind of recovery of input VAT incurred in the course of their VAT exempt financial activities (in certain cases there may be a limited recovery available).

If business activities are partly exempt, the recovery of any input VAT which cannot be matched directly either to VAT-able sales or VAT exempt sales should be effected in line with the proportion of the net value

of the taxed supplies to the total value of all supplies (a so called pro rata recovery). During a calendar year, the proportion is calculated based on the volume of supplies made in the previous year. At the year end, the amount of deductions is adjusted to the actual percentage calculated for the whole year. In the case of tangible or intangible assets subject to depreciation for tax calculation purposes, the percentage of input VAT which may be deducted is subject to adjustments over the period of 5 or even 10 years (in the case of real estate).

Calculation of the percentage of input VAT to be deducted is necessary only if it is not possible to match input VAT with taxed activities or exempt activities directly.

As of 1 January 2016 taxpayers also need to take into account so called preliminary pro-rata that limits input VAT recovery on purchases, if linked both with the economic activity of the taxpayer and other activities not related with business operations.

The recovered input VAT also has to be adjusted if the liability resulting from the invoice documenting the expense incurred is not settled within the specified deadlines (as a rule 150 days). Additional sanctions may apply if no adjustment is made (i.e. additional tax liability up to 30% of tax resulting from the not settled invoices, which has not been accordingly adjusted).

Date of input VAT recovery

The right to recover input VAT arises in the period when - with respect to the acquired goods or services - the tax point arose (i.e. in the month in which the services were rendered to, or the goods were acquired

by the purchaser). It cannot be, however, recovered earlier than in the period in which the taxpayer receives the respective invoice (prepayment invoices do not fall under this rule: they must be paid in order for input VAT to be reclaimable).

Direct refund of input VAT

A direct refund of any surplus input VAT incurred should be made within 60 days of the submission of the application for the refund (the VAT return) on condition that the taxpayer performed VAT-able supply in the period for which the refund is claimed.

Please note that this deadline can be shortened to 25 days at a taxpayer's request if the input VAT to be refunded resulted from invoices that have been paid in full but - due to the changes as of 1 January 2017 - this shortened refund period option would rather not apply to the purchase of real estate.

It is possible to get a refund of input VAT even if VAT-able supplies are not made in the period for which the refund is claimed. However, in such a case the period for the refund is extended to 180 days, unless a form of security, e.g. a bank guarantee is provided (in which case the refund must be made within 60 days).

Share deal

A capital gain on the sale of shares is subject to Polish corporate income tax at the standard rate of 19%.

If the selling party is a foreign shareholder, the applicable tax treaty influences the tax implications of such a transaction. Under most tax treaties concluded by Poland

the right to impose taxes on the sale of shares in corporate entities is allocated to the country where the shareholder is a tax resident. In such cases Polish income tax rules are not applicable and the fiscal rules of the country in which the shareholder is a tax resident govern the transaction. In some countries capital gains on shares are exempt from taxation. The rationale behind this exemption is that the taxation of capital gains on shares constitutes double taxation: the profit within the company is taxed using the normal income tax rate and, therefore, the profit on the share transaction should not be taxed again. In international taxation terminology this exemption is known as the Participation Exemption. Some countries limit this Participation Exemption to capital gains on share transactions involving domestic shares only. Other countries enable the Participation Exemption to be applicable to transactions involving the shares of foreign companies as well.

Significant part of Polish tax treaties (e.g. with Spain, France, Denmark, Sweden, Germany and - following recent changes of Polish tax treaties - also Luxembourg that used to be a preferred jurisdiction for holding structures) provide that a sale of shares in a company holding mainly real estate assets should be regarded as a sale of real estate. Consequently, income earned on the sale of shares in the Polish company will be taxed in Poland (the so called Real Estate Clause).

The sale of shares in the Polish company is subject to a 1% civil law transaction tax (on the fair market value of shares) payable by the buyer. This is irrespective of where the transaction takes place or where the parties

to the transaction are resident for tax purposes. A share transaction is not subject to Polish VAT. However, where a share transaction is treated as being made in the course of business activity (rather than as a one-off transaction), it may be classified as a VAT-able event. However, it will still be subject to civil law transaction tax.

Costs which must be incurred in order to acquire shares (e.g. purchase price and notary public fees) may be recognized as tax deductible costs upon the sale of shares.

Other costs indirectly connected with acquisition of shares such as financing costs may be recognized as tax deductible costs when incurred (in certain cases recognition over time may occur).

Cross-border structure

Typically, foreign investments are structured in such a way that the overall level of taxation of the financing, exploitation, and potential capital gain is kept as low as possible, seeking to avoid double taxation. International tax planning should determine the final structure of the investment. Commonly, a structure involving more than two jurisdictions is used to optimize the overall tax position. The tax treatment of all the relevant legal transactions involved in a Polish real estate project differs according to the other jurisdiction(s) involved. The tax treaties concluded by Poland should prevent double taxation. Investigating the tax treaties and the applicable rules in the different relevant jurisdictions will help to determine what structure, given the specific circumstances, should be arranged. Therefore, it is fair to say that there is no typical cross-border

investment structure, and that each investment project is unique.

Nevertheless, the following points should be considered when designing the most efficient structure:

- ▶ interest payable in respect of any debt financing of the investment should be fully tax deductible;
- ▶ interest income should be reported as taxable income in a jurisdiction with a relatively modest tax rate;
- ▶ the exploitation and operational costs of the real estate should be tax deductible to the largest extent possible;
- ▶ profits from the exploitation of real estate should be taxed at the lowest rate possible;
- ▶ after-tax profits should be easily distributed;
- ▶ Polish withholding tax should be reduced as much as possible;
- ▶ revenues from the future sale of real estate or the shares of a company should be taxed at the lowest rate possible or should be exempt from taxation;
- ▶ all strategies for the deferral of the tax payment date should be explored;
- ▶ level of substance which can be maintained in a given jurisdiction.

Addressing these points will help to design and implement a tailor-made structure.

Additionally, bearing in mind the general anti avoidance regulation that is considered to be introduced to the Polish tax regulations and introduced as of 1 January 2015 CFC (“Controlled Foreign Company”) rules, the cross border investments should

be each time carefully examined and properly structured also from the business perspective to ensure their effectiveness from the tax point of view.

CFC Rules

The implemented from January 2015 CIT regulations regarding CFC define CFC as:

1. a foreign company seated in a tax heaven (as officially blacklisted by the Polish Ministry of Finance) or
2. a foreign company having its seat or place of management in the country other than mentioned in point 1), with which:
 - a) Poland has not concluded an international agreement, in particular double tax treaty, or
 - b) EU has not concluded an international agreement
 - ▶ being a basis for requesting tax information from tax authorities of that country, or
3. a foreign company which jointly fulfills the following conditions:
 - a) the Polish taxpayer has a direct or indirect shareholding (for an uninterrupted period of at least 30 days) of at least 25% shares or 25% voting rights or a 25% stake in profits of the CFC;
 - b) at least 50% of annual revenues of the CFC consist of a passive income, i.e.:
 - ▶ dividends and other income from sharing profits of legal persons

- ▶ disposal of shares, receivables
 - ▶ interest or benefits from all types of loans, securities or guarantees
 - ▶ copyrights or intellectual property rights - including disposal of those rights
 - ▶ disposal or exercise of rights from derivatives;
- c) at least one of the sources of passive income (listed in point b) is not subject to tax, is tax exempt or is subject to tax at a lower rate by at least 25% than the Polish statutory CIT rate (now 19%) in the CFCs country of residence (unless the tax exemption results from of the Parent Subsidiary Directive).

CFC provisions should not apply in the case where:

- ▶ the CFC, which is subject to taxation on its total income in one of the EU / EEA Member States, carries out actual business operations in this state, or
- ▶ the CFC revenues in a tax year are below EUR 250 000; or
- ▶ the CFC carries out actual business operations outside of the EU or EEA Member States in which it is subject to tax on its total income and its net income does not exceed 10% of revenues earned from the actual business operations in this state -

subject to the condition that there is a legal basis resulting from the agreement between Poland or EU and a respective state, based on which the Polish tax authorities may request information from the tax authorities of that particular state.

The Polish companies are obliged to hold registers of the CFC companies.

Step-up of initial tax basis of assets

Polish tax regulations in some cases provided an opportunity to increase the initial tax basis of assets, which was used to generate a tax shield (by increasing the ability to make tax depreciation write-offs and to minimize taxable capital gains upon sale). Careful tax analysis was always required before carrying out such a transaction but it should be noted that the environment has significantly changed due to implementation of general tax anti-abuse rule (GAAR) as of 15 July 2016. The intention was to prevent the creation and use of artificial legal constructs to avoid payment of tax in Poland. The rule applies to tax benefits exceeding PLN 100k obtained following the implementation of the new regulation, however this includes also tax benefits that results from artificial structures set-up before GAAR come into force.



2.5. Development and construction

2.5.1 Legal aspects

2.5.1.1 Land development issues

Land development issues are important for real estate investors, as they determine the possible method of investing in a given area. Regulations on land development may influence the shape of the planned building, but sometimes they also prevent the investor from the investment.

Legal background

Land development issues represent one of the main difficulties in the real estate investment process in Poland. As a result of the introduction of the Spatial Planning and Development Act of 27 March 2003 (hereinafter referred to as the Spatial Planning and Development Act), all local spatial development plans adopted before 1 January 1995 expired as of 1 January 2004. For this reason, as well as due to the complex procedure for adopting a local spatial development plan, currently only a part of the territory of Poland is covered with local spatial development plans, mostly within the boundaries of bigger cities.

The Spatial Planning and Development Act sets out the principles for the land development process. In particular, it

grants authorization to the relevant local authorities to develop and manage spatial policy. The Spatial Planning and Development Act also sets forth the procedure under which spatial planning and development acts are to be adopted by these authorities. The two main spatial planning and development acts determining land development within a given municipality (commune) are the spatial development conditions and directions study and the local spatial development plan. However, from investors' perspective, the local spatial development plan is of higher importance, as it determines their rights and obligations, while the spatial development conditions and directions study binds the local authorities only. In the case where no local spatial development plan has been adopted for a given area, the investor may apply for a decision on land development and management conditions (hereinafter referred to as the zoning decision). Where a building permit is required for an investment, either a local spatial development plan or a zoning decision are required to start the development of the real property, since, as a rule, no building permit may be issued without them.

Therefore, before buying the real property, it is crucial for investors to verify:

- ▶ whether the real property in question is covered by a local spatial development plan (or whether such a plan will be adopted soon);
- ▶ in the event there is no local spatial development plan, whether a zoning decision has been issued for the real property in question; and

- ▶ whether the provisions of the local spatial development plan or zoning decision allow for the implementation of their investment plans.

Spatial development conditions and directions study

A spatial development conditions and directions study is an internal document issued by each municipality (commune), which covers the whole territory of the relevant commune. A spatial development conditions and directions study provides the background/guidelines for drafting a local spatial development plan. As an internal document, a spatial development conditions and directions study does not bind investors but only the local authorities which design and adopt local spatial development plans. Local spatial development plans may not be contrary to the assumptions of a spatial development conditions and directions study. Therefore, spatial development conditions and directions studies may be a good source of information for the investor on the future directions of a given area's development.

Local spatial development plan

The local spatial development plan is adopted by the commune council and is binding for third parties (investors) as an act of local law.

Each local spatial development plan determines the manner of development of the territory covered by that plan. In particular, it determines the designation of plots (land use - agricultural, forest, building purposes, etc.), development conditions and types of facilities which can be located on the plots. The procedure for

adopting a local spatial development plan is rather complex and time consuming as the draft local spatial development plan is subject to “public consultation” with the parties concerned as well as opinions issued by the relevant administrative bodies.

The provisions of the local spatial development plan are crucial for investors, as the planned development of the plots covered by such a plan must comply with its provisions, in particular, regarding the distance of a building from the plot’s border or the height of a building. Sometimes the provisions of a local spatial development plan may render the development of the given plot impossible. Moreover, large retail units with a sale surface exceeding 2,000 m² can only be constructed if a local spatial development plan providing for retail development has been adopted for a given area.

Therefore, to be able to implement their investment plans, sometimes investors start a procedure of amending the local spatial development plan, which may prove to be rather time consuming.

Zoning decision

In the case where no local spatial development plan has been adopted for the given area, an investor may apply for a zoning decision, which sets out all the required conditions for the development of that area. Before the building process is started on the given plot under a building permit, the plot must be covered either by a local spatial development plan or by a zoning decision (therefore, it can be said that a zoning decision substitutes a local spatial development plan for an investor).

A zoning decision is issued by the governing authority of the commune. The procedure for issuing zoning decisions includes the performance of a zoning analysis by the local authority’s architecture department and it may, therefore, take even up to several months.

If a local spatial development plan is being adopted for a real property, zoning decisions related to this area expire if the provisions of the local spatial development plan differ from those of the zoning decision. However, this shall not happen if a final building permit has already been issued for the real property in question. Therefore, in the case where there is no local spatial development plan for a given real property, prior to investment planning the investor should monitor the stage of works related to the local spatial development plan and should learn if it is possible to acquire a final building permit before the local spatial development plan is adopted.

An application for a zoning decision may be filed with the relevant authority even when the applicant does not hold any title to the land in question. A zoning decision may be transferred to third parties.

This means that investors may use a decision issued for the seller of a real property, as they do not have to apply for the decision once again after acquiring the real property (the investor only applies for the transfer of such a decision to himself). Investors may also apply themselves for such a decision before deciding on the investment.

Building permit

A building permit is an administrative decision issued by a local authority (starosta or mayor in bigger cities) which allows an investor to start the development process on the site.

The documents attached by the investor to the application for a building permit should include, in particular, a declaration of having legal title to use the real property for construction purposes. Moreover, the application must also enclose approvals of the local authorities responsible for local infrastructure, in particular utilities, roads, environmental protection and sewage treatment. The building permit will only be granted if the construction design is consistent with the assumptions of the local spatial development plan or zoning decision as well as with the regulations governing technical conditions for the development.

As a general rule, a building permit expires either if construction works have not been started within three years of the date on which the permit became final or if construction works have been discontinued for more than three years.

Not all construction works require a building permit. Construction of certain structures which are listed in the Building Law of 7 July 1994 (hereinafter referred to as the Building Law) may be commenced upon a notification sent to the relevant authorities if no objections have been raised by them within 30 days of the notification date.

Recently, in 2016, the requirements on obtaining a building permit were

liberalized by abolishing an obligation to obtain a building permit for several minor constructions (e.g. gazebos, culverts, etc.).

The notification procedure pertains however generally to minor construction works or developing some of residential (single family) buildings.

In 2016 Polish government began work on new Urban Planning and Construction Code. The new regulation, replacing Spatial Planning and Development Act, Building Law and minor acts, will significantly change the rules of investment process.

Under the proposed law, one document - an investment consent will replace following documents: a building permit (or notification), zoning decision and a decision on division of a real estate. Urban Planning and Construction Code provides for the classification of investment into 6 categories of the investment procedure, dependent on the complexity of the investment.

Moreover, the code will strengthen the role of development study (now: spatial development conditions and directions study), which will cease to be a purely internal document. In the proposed legal framework, the development study will be considered in the process of issuing an investment consent. The act was not adopted yet and there are small chances the act to be adopted in 2017.

Usage of the building

Depending on the individual case, the use of a building or structure after its completion requires either notifying the construction

supervisory authorities that construction works have been completed or acquiring a permit for use.

In the case where only a notification is required, under the general rule the investor may occupy and use the building or structure if no objection has been raised by the authorities within 14 days of the date of notification.

In cases where a permit for use is required, the building may be occupied only after the decision granting the permit for use is granted. The granting of a permit for use is preceded by a technical inspection of the building or structure to confirm that all construction works have been performed in compliance with the terms and conditions of the building permit as well as technical requirements.

Occupying a building in breach of the above-mentioned regulations may result in a fine.

Environmental issues

The building process has many environmental aspects that must be taken into account. The Polish law provides that an environmental decision must be obtained prior to obtaining a zoning decision and a building permit for the given project. Pursuant to the Polish law, from the environmental law point of view, the investments are divided into two groups:

- ▶ projects that always have significant impact on the environment;
- ▶ projects that may have significant impact on the environment.

Environmental decision must be preceded by the environmental impact assessment

proceeding (which includes preparation of environmental impact assessment report) in case of projects that always have significant impact on the environment (i.a. parking lots, buildings of a particular size etc.). However, the environmental impact assessment proceeding may be also ordered by the authority issuing the environmental decision in relation to projects that may have significant impact on the environment.

Despite of the fact that environmental impact assessment is carried out at the stage of issuing the environmental decision, it may also be repeated (in certain circumstances) at the stage of issuing a building permit.

Environmental impact assessment is a legal instrument that allows to determine the effect of the planned investment on the environment (i.e. water, land and air quality as well as impact on flora and fauna). Environmental impact assessment proceeding, beyond the identification of specific impacts that the proposed project may have on the environment, concentrates on the ways to prevent and minimize the effects of the planned project.

Pursuant to the Polish law, authorities must inform the general public about the environmental impact assessment proceeding and allow the general public to submit comments and recommendations to the proceeding.

Moreover, Polish law in certain circumstances allows a broad access to the environmental impact assessment proceeding to non-governmental environmental protection organizations.

Environmental decision may be transferred (as well as the building permit issued on the basis of a zoning decision).

Energy efficiency

The EU regulations within energy efficiency of buildings, are ambitious, so is the Polish legislation keeping up with the newest directions.

According to the information of the Ministry of Infrastructure and Construction, starting January 2017, the real estate market will be challenged with a new values of EP energy ratio for newly built buildings and some of the coefficient U factors for thermal transmittance of external walls of buildings. The new law, incorporated back in 2014 is entering into force gradually in order to make Polish legal system compliant with the European Directive on the energy performance of buildings, according to which, until 31 December 2020 each and every newly built building shall be nearly zero-energy.

The regulation will cover all of the architectural and construction designs which are going to be submitted together with the applications for a construction permission in 2017. New provisions introduce a gradual increase in the level of requirements up to the year 2021. Such a phased changes allow smooth adjustment of the construction market to the applicable legal requirements.

2.5.1.2 Construction issues

Legal framework for construction works contracts

The Civil Code includes provisions which establish the legal framework for construction works contracts. Most of those provisions are general in nature and enable contracting parties to structure the construction works contracts in a way that addresses their particular business needs. Such a flexible legal framework allows the parties very often to use international standards for construction works contracts, including the popular FIDIC forms. However, not all the provisions of international standards for construction works contracts comply with the requirements of the Civil Code and the Building Law.

In particular, a more detailed analysis should be performed with respect to contractual clauses regarding statutory warranty periods, contracts with and liability towards subcontractors as well as contractor's payment guarantees. Below we present the key legal regulations in this areas.

Legal framework for development of wind farms

Within the 2016 approach to investments of wind energy has fundamentally changed. These changes refer to above all two main areas, concerning: (i) supporting the production of wind energy and (ii) new restrictions for development of wind farms and increase of real estate tax ("RET").

The foregoing is a result of new law regulations which entered into force in

July 2016, exercising substantial influence on wind farm project efficiency, i.e.: (i) amendment to the Act on Renewable Energy Sources ("RES Act") (ii) new Act on Windfarms Investments ("Windfarms Act"). To a great extent, the said restrictions regard only new wind farm projects, only partially applying to the already existing wind farms, e.g. with respect to RET.

Most important amendments provided by RES Act include: (i) changes to the auction system - auctions will be divided into different groups determined e.g. by technology (so-called "baskets"); for each individual group the auctions will be held separately and (ii) changes for larger renewable energy sources installations and green certificates system, according to which, e.g. mandatory energy purchase by an obligated seller is no longer applicable, thus many large entities may suffer from a reduction in their revenues.

The above changes resulted in the decrease of price for green certificates.

What is more, additional new restrictions applicable for wind farm market were introduced by the Windfarms Act, including:

(i) minimum distance required between a wind power plant and residential buildings, forests, and environmentally protected areas (e.g. Natura 2000, national or landscape parks), i.e. 10 times the height of a wind turbine generator with rotor (approximately between 1,5-2 km) - in many cases it will be impossible to build new or expand already existing projects;

(ii) re-construction restrictions: already existing wind farm located within the smaller distance than indicated under

item (i) above, will not be allowed to be modernized or developed (only regular maintenance will be permitted);

(iii) planning conditions: new wind farms could be located only on the basis of local spatial development plans (individual zoning decisions and decision of public aim investments will no longer be sufficient),

(iv) new definition of wind turbine generator which may result in increase of RET imposed on the owners of the wind farms.

Taking the above into consideration, a tendency of the Polish government to reduce support for the wind energy industry and impose new restrictions regarding conditions of development and RET increase can be observed.

Statutory warranty periods

Under the Polish law, the statutory warranty period for acquired real estates, including buildings is five years from the property's hand-over date. The above mentioned statutory warranty period of five years applies also in the construction works contracts.

Approval of a contract with a subcontractor

Before a subcontract is concluded by the general contractor with a subcontractor, such a subcontract should be approved by the investor in writing. Upon being provided with the draft subcontract, the investor reviews it and decides whether the subcontract should be dismissed or approved. The investor should respond in the matter of dismissing or approving the subcontract within 14 days of its receipt.

If no response is given by the investor, the subcontract is deemed to have been approved. In the case where an investor has dismissed a subcontract, such a subcontract signed between the general contractor and the subcontractor is unenforceable against the investor.

Liability towards subcontractors

In the case where the investor has approved the subcontract between the general contractor and the subcontractor, the investor is jointly and severally liable with the general contractor for the payment of the remuneration to the subcontractor. The parties must not change this rule in a contract. Therefore, contracts often include a clause under which the investor is not obliged to pay the remuneration to the general contractor unless the general contractor presents a confirmation of payment to the subcontractor. There are also some other methods of securing the investor's risk of a double payment (to the general contractor and to the subcontractor), which must always be adjusted to the business requirements of given investment.

Contractor's payment guarantee

One of the inconveniences for investors signing construction works contracts is the obligation to grant a payment guarantee to the general contractor. Under this obligation a general contractor is entitled to a statutory claim against

the investor for a payment guarantee up to the maximum amount of the contract value. The investor may satisfy the general contractor's claim by issuing a payment guarantee in the form of a bank guarantee, an insurance guarantee, a letter of credit or a bank's suretyship. The statutory claim for a payment guarantee may be raised at any time and can be extended to include the value of any additional works agreed in writing during the term of the construction works contract.

Construction design contracts

One of the key elements of the building process is drawing up a construction design. A construction design is a formal requirement for obtaining a building permit for most of building investments. Under the Polish law a construction design must be drawn up and signed by a certified architect, who takes responsibility for the technical aspects of the construction. The architect should prepare a design under a contract for architectural services which, depending on its scope, may either transfer the copyright to the construction design to the investor or provide the investor with the right to use the construction design for the purposes of the relevant investment. It is worth mentioning that a contract for architectural services may include various restrictions with regard to the copyright or the use of the design. Such restrictions may be crucial for the investment development process, in particular when they regard the possibility of entering modifications to the construction design or transferring the copyright to other entities.

Public procurement contracts

General overview

Thanks to a number of EU funding programs every year Polish authorities have billions of euros at their disposal to be spent on development. A considerable part of this funding will be designated for infrastructural projects, in particular road and railway infrastructure, which is still not very well developed in Poland. For this reason, many of the infrastructural investments developed on the Polish market will be carried out under public contracts.

Poland, as one of the EU Member States, was obliged to implement regulations governing public procurement proceedings. The provisions of EU directives on public procurement were implemented to the Public Procurement Law, which constitutes the legal framework for this matter in Poland. The Public Procurement Law is supplemented by additional legal acts which relate in particular to public-private partnership and licenses for construction works and services.

The main goal of public procurement regulations is to establish clear and competitive rules and procedures for awarding public contracts to the suppliers of works and services as well as to provide measures for supervision over the public authorities awarding public contracts. The key objective of the Public Procurement Act is to ensure that public contracts are awarded while applying equal treatment to all entities taking part in tender proceedings as well as to ensure impartiality and objectivity of the final decision.

Procedure

Under the Polish public procurement regulations there are numerous different procedures for awarding public contracts. The ones that are most commonly applied are open tendering and limited tendering. Both procedures must be followed by a public notice. Notice on contract performs the aim of providing proper implementation of the rule of equal treatment in the very beginning of the procedure. The obligation of publishing a notice also provides non-confidentiality and transparency of the applied public contract systems.

In general, open tendering is a simple procedure, meaning that entities familiarize themselves with the information in the notice and in SETC and, if they are interested in submitting tenders in such procedure, they submit a tender which shall then be evaluated by ranking.

Under limited tendering procedure, entities interested in being awarded a public contract submit requests for participating in the tender and the awarding party decides which bidders may submit their proposals. Other public procurement procedures such as competitive dialogue, negotiated procedure with publication, negotiated procedure without publication, single source procurement, request for quotations or electronic auction can only be applied under specific circumstances stipulated in the binding law.

A similar course of action should be applied to the above main types of the public procurement procedure. Each of them is comprised of pre-qualification, submission of proposals and selection

of the winning tenderer phases. In the pre-qualification phase the awarding party sets out the requirements / criteria to be met by the tenderers. Based on the specific requirements / criteria, tenderers draft their proposals and submit them to the awarding party. In the proposal each tenderer demonstrates its compliance with tender requirements by referring to its competencies, such as experience, knowledge and financial capacity to perform the contracted work. After reviewing all submitted proposals the awarding party selects the best tenderer with whom the public contract is to be signed.

However, this is not necessarily the end of the public procurement process as there is a possibility of appealing against the decision of the awarding party. In practice, the appeal procedure is quite commonly used by the tenderers who lost a public contract, which often results in delays in the completion of the investment project concerned.

2.5.2. Tax implications

Tax treatment of the construction costs

Costs related to construction process and accrued prior to putting the assets into use form the initial value of the real estate and are recognized as tax deductible cost through depreciation write-offs or upon sale.

Costs related to future operation / exploitation of the assets should be

recognized for tax purposes based on general rules.

VAT and the construction process

During the construction process, the most important tax is VAT. The standard rate of VAT in Poland is 23%. A reduced VAT rate of 8% applies to the construction of residential houses/apartments except for part of residential buildings where the usable floor space exceeds 300 m² and apartments where the usable floor space exceeds 150 m². In such cases only construction of the part of the residential building and/or apartment, which is within the above limits, benefits from 8% VAT rate, whereas construction of the part exceeding the thresholds is subject to standard 23% VAT rate.

Purchases the investor needs to make during construction will typically include Polish VAT. This input VAT could be deducted from the output VAT that the investor has to pay to the tax authorities as a result of his business activities. As the construction process usually takes a considerable period of time and requires the availability of substantial financial resources, it is essential that the input VAT paid is recovered during this process. Rules of VAT recovery and refunds are presented in section 2.4.3. However, during the construction process the typical situation is that the company has to pay high input VAT (resulting from purchase invoices), but no output VAT is incurred. Therefore, specific rules need to be observed to ensure the recoverability of input VAT paid during the construction process.

Also, it is worth mentioning that - as of 1 January 2017 - certain construction services (listed in the VAT Act) provided by subcontractors may be subject to reverse charge mechanism (i.e. self-assessment of both input and output VAT).

Services of foreign contractors

The place of the supply of services (i.e. the place in which services are deemed to be rendered and should be taxed accordingly) depends on the nature of a particular service. Under the general rule, services rendered to a VAT taxpayer (or a legal person not being a VAT taxpayer) occur where the service recipient is located. However, services connected with real estate are generally taxed where the real estate is located, i.e. in Poland. Services connected with real estate include construction works, services of architects and firms providing on-site supervision and the services of real estate agents and property appraisers.

If the place of supply of a particular service is Poland, it is possible for a foreign construction company to register in Poland as a VAT-payer. This implies that the foreign company will itself be liable for Polish VAT. The recipient of the services can recover the VAT paid to the service provider as input VAT under the general rules.

If services are deemed to be rendered in Poland and the foreign service supplier does not register and account for Polish VAT on his invoice, the Polish recipient (in this case the real estate company) must self-assess the VAT due on the basis of the reverse charge mechanism. This can then be declared by the recipient as input

VAT and be deducted from its output VAT. Such a deduction may be made in the same month in which the output VAT on importation of services was recognized (which means that the company suffers no adverse cash flow effect).

Taxes due on imported goods

Imported goods are always subject to import VAT when they cross the EU border (or in the EU destination country when the goods are transported under a special customs procedure). This VAT is calculated based on the customs value of the goods increased by the customs due. It is possible to offset this input VAT against output VAT in accordance with the general VAT rules. Typically, in Poland the VAT rate is 23%.

Import VAT can be settled without the need for an upfront cash payment through the VAT return rather than being paid directly to the customs office and thereafter reclaimed (this mechanism is sometimes referred to as "postponed accounting for VAT"). This rule applies only to importers using the simplified customs procedure.

The regulations concerning imports do not apply if goods are transported from another EU Member State. Such a transaction is classified as an intra-Community acquisition and is subject to VAT. The company is obliged to self-assess VAT on the acquired goods at the rate appropriate for them (usually 23%). At the same time self-assessed tax may be treated as input VAT and deducted from output VAT in the same month in which it was incurred, provided that the acquirer is in possession of a purchase invoice or will obtain it within 3 months.

No excise tax is due on typical construction equipment and materials.

Taxation of a foreign construction company

In some cases it is not necessary for a foreign construction company to do business through a Polish company. The construction work can be performed in Poland directly by the foreign entity. In this case the question arises as to whether the foreign company is subject to Polish income tax on the revenues generated from the construction work. Poland is indeed allowed to tax this income at a rate of 19% if the activities of the foreign company constitute a permanent establishment in Poland.

Whether or not the given foreign construction company has a permanent establishment is determined by the relevant tax treaty which Poland has concluded with the country in which the foreign company is based. In general, a construction site becomes a permanent establishment once the duration of the construction works exceeds a certain period of time. Usually this period is 12 months. If the

work is finished within 12 months, then no permanent establishment has been created. If the construction period takes longer, then a permanent establishment is recognized and the income derived from the work is subject to Polish income tax. It should be remembered that in such cases the permanent establishment is deemed to exist from the start of the construction activities in Poland. Standard rates and tax rules are applicable to determine the tax due.

Please note that if the activities of a foreign company in Poland extend significantly beyond a single contract, the company may be required to set up a branch. Setting up a branch will most likely lead to the creation of a permanent establishment in Poland.

Note that OECD works on Base Erosion and Profit Shifting (BEPS) should be closely monitored, since one of the proposed actions is aimed at the cases where the construction works are artificially split into various stages to avoid permanent establishment status.

2.6. Operation and exploitation

2.6.1. Legal aspects

2.6.1.1. Introduction

According to the Civil Code, parties of the contract may benefit from the principle of freedom of contracts, which gives them an opportunity to modify the statutory types and provisions of the civil contract. However, there are some mandatory provisions and limitations, which have to be considered by the parties. Among all types of property exploitation agreements, the below are the most common for the Polish real estate sector:

- ▶ Lease (*najem*) - regulated in articles 659 to 692 of the Civil Code,
- ▶ Tenancy (*dzierżawa*) - regulated in articles 693 to 709 of the Civil Code,
- ▶ Leasing of real estate (*leasing nieruchomości*) - regulated in articles 709(1) to 709(18) of the Civil Code,
- ▶ Property management (*zarządzanie nieruchomościami*) - regulated in the Act on Property Management.

2.6.1.2. Lease agreement (*najem*)

Under the lease agreement the lessor grants to the lessee the right to occupy premises (office, residential etc.) in



exchange for the payment of rent. In general, everything that can be subject to the ownership right, may be also subject to this agreement, nevertheless in case of real estate, the more strict provisions may apply.

Duration

The duration of a lease agreement may be definite or indefinite. The lease agreement may be concluded in any form, however, in case of a lease of a real property for a period longer than one year, the agreement shall be concluded in writing. In case of a lack of a written form, the lease agreement shall be deemed to have been concluded for an indefinite period of time.

The duration of a lease agreement may be freely fixed by the parties, however, there are certain restrictions. The lease agreement concluded for a period longer than ten years, is, after this period, deemed to have been concluded for an indefinite period of time. The rule above is different for the lease agreements concluded between entrepreneurs. In this case the lease agreement concluded for a period longer than thirty years is deemed to have been concluded for an indefinite period of time after the thirty years' period has passed.

Rent

Paying rent is the principal obligation of the lessee. The lessee is obliged to pay rent within the agreed time. If the due date is not fixed in the agreement, the rent should be paid in advance: if the lease is not longer than one month - for the whole lease period, and if the lease is longer than one

month or if the contract is concluded for an indefinite period of time - monthly, no later than on the tenth day of the month. In practice, the lease agreements regulate in details the payment of the rent.

Maintenance and expenditures settlement

The lessor should hand over the property to the lessee in a condition fit for the agreed use. It should be maintained by the lessor in this condition throughout the lease term. Minor repairs connected with the normal use of the property should be fixed by the lessee, unless the lease agreement provides for otherwise. If the subject of lease is destroyed due to circumstances for which the lessor is not responsible, he is not obliged to restore it. If, during the lease period, the property requires repairs which encumber the lessor, the lessee may set the lessor an appropriate time for repair. After this period the lessee may carry out the repairs needed at the lessor's cost.

If the lessee improves the subject of lease, the lessor may - after the expiry of the lease term, at its discretion, either demand that the previous condition be restored or pay the lessee a sum corresponding to the improvement value at the time of return. In practice, these issues are usually covered by the provisions of the lease agreements.

Subletting and disposal of the leased property

The general rule is that the lessee may hand over the property or part of it to a third party for free of charge use or sublet it, if the lease agreement does not forbid it. However, when the subject of lease

constitutes premises or retail areas, hand over the property or part of it to a third party for free of charge use or sublet it requires the lessor's consent. If the leased property is handed over to a third party, both the lessee and the third party are liable towards the lessor for using the property in accordance with the provisions of the lease agreement. The relationship arising from a contract for free of charge use or subletting concluded by the lessee is terminated, at the latest, when the main lease agreement is terminated. In practice, the lease agreements forbid subletting the property to a third party or require the prior written consent of the lessor.

The leased property can be disposed of during the lease period. In this case the acquirer becomes a party to the lease agreement as a lessor in place of the seller. The approval of the lessee is not required. The new owner may terminate the lease agreement retaining statutory notice periods. However, the new owner does not have a right to terminate the lease agreement if it is concluded for a definite period of time, in written form with an authenticated date (*data pewna*) and the subject of lease has been delivered to the lessee. If, as a result of the lease agreement being terminated by the acquirer of the leased property, the lessee is forced to return the leased property earlier than he would have been obliged to under the lease agreement, he may demand compensation from the seller.

Security

Lessor often use the special clauses in the lease agreements to secure their potential claims to lessees such as money

deposit, promissory note, surety and bank guarantee.

- ▶ Money deposit - it is a sum of money submitted by the lessee in order to secure the lessor's potential claims in case of non-fulfillment of the lease agreement or damages caused by the lessee. As far as the lease of commercial premises is concerned, there is almost unlimited discretion in determining the content of the clause. In the case of lease of residential premises, which are the subject to regulation of the Act on the protection of lessee's rights of 21 June 2001 (hereinafter referred to as the Lessee's Protection Act), the freedom of parties forming the content of this additional contractual claim is limited. A money deposit cannot exceed twelve times the monthly rent for the premises and the rent should be calculated at the rate applicable at the date of the lease.
- ▶ Promissory note - promissory note issued by the lessee is an effective way to protect the lessor's potential claims. In case of default in payment of rent or in case of other claims against the lessee, the lessor can make use of the promissory note and request the lessee to redeem it. In case the lessee does not fulfill its obligations from the promissory note, the lessor can start the court procedure against the lessee.
- ▶ Surety - in the contract of surety, the guarantor undertakes to perform certain obligation of the lessee towards the lessor if the lessee does not perform them, mostly this refers to the payment of due amounts. The liability of the guarantor is equivalent, not subsidiary.

This means that the lessor may request a payment from both the lessee and the guarantor.

- ▶ Bank guarantee - it is a unilateral obligation of the guarantor's bank, according to which the bank will provide funds to the beneficiary of the guarantee - the lessor, if the lessee does not fulfill its obligation. The parties of the lease agreement typically determine a period that has to elapse from the payment due date and after which the lessor has the right to execute a bank guarantee.

Termination

A lease agreement concluded for an indefinite period of time may be terminated by any party with a prior notice of termination (its length is in practice defined in the lease agreement). The statutory period of notice of termination for the lease agreement concluded for an indefinite period of time is as follows:

- ▶ if the rent is due for a period longer than a month - the contract can be terminated by giving a three-month notice, effective at the end of the calendar quarter;
- ▶ if the rent is due every month - the contract can be terminated with a one-month notice, effective at the end of the calendar month (three-month notice in case of lease of premises or retail areas, effective at the end of the calendar month);
- ▶ if the rent is due for a period shorter than a month - the contract can be terminated with a three-day notice;

- ▶ if the rent is due for one day - the contract can be terminated one day in advance.

The lease agreement concluded for a definite period of time may be terminated only in cases specified in the contract.

However, the Civil Code stipulates that the parties can terminate the lease agreement immediately if certain conditions defined by the above code occur. This applies to contracts concluded for both definite and indefinite period of time:

- ▶ if, at the time of handing it over to the lessee, the subject of lease has defects that make it impossible to use it in the way defined in the lease agreement, or if the defects occur later and the lessor does not, despite receiving a notice, remove them in an appropriate time, or if the defects cannot be removed - the lessee may terminate the lease agreement without notice;
- ▶ if the lessee defaults in paying rent for longer than two full payment periods - the lessor may terminate the lease agreement without notice (in case of lease of premises or retail areas, before termination, the lessor is obliged to warn the lessee in writing by giving him an additional one-month period to pay the overdue rent);
- ▶ if the lessee uses the subject of lease contrary to the terms of the agreement or the purpose of this and, despite a warning, does not cease to use it in this way, or if a lessee neglects it to such an extent that the subject of lease is at risk of being lost or damaged - the lessor may terminate the lease contract without notice.

Lease of premises for residential purposes

Residential lease agreements, due to their purpose are subject to special protection which arises from the provisions of the Lessee's Protection Act. This protection applies mainly to the limited possibility of termination of the lease. There is also a specific regulation regarding the rent increase.

2.6.1.3. Tenancy agreement (dzierżawa)

By a tenancy agreement, the lessor commits to hand over a subject of tenancy to the lessee's use and collection of profits for a fixed or a non-fixed term. In exchange, the lessee commits to pay the agreed rent. The tenancy agreement gives not only the right to use the property but also to collect benefits from it, which is why the tenancy agreement usually concerns land.

The duration of a tenancy agreement may be definite or indefinite. However, the tenancy agreement for a period longer than one year should be concluded in writing, otherwise it is considered to be concluded for an indefinite term. Also a tenancy agreement executed for a longer period than thirty years is deemed to be concluded for a non-fixed term, after this period passes.

Under the Civil Code, if the rent payment period is not specified in the contract, rent is payable in arrears on the date customarily accepted, and in the absence of such custom, semiannually in arrears. If the lessee defaults in payment of rent for at least two full payment periods and, in the case of rent paid annually, he defaults in

payment for over three months, the lessor may terminate the tenancy without notice. However, the lessor should warn the lessee by giving the lessee an additional three-month period to pay the overdue rent.

The lessee is responsible for the costs of all repairs to the extent necessary to keep the subject of tenancy in the same condition. However, the parties are able to modify this rule in the tenancy agreement. There are also some differences between a lease agreement and a tenancy agreement in the field of subletting a property. The lessee cannot sublet the property without the lessor's consent. If the above obligation is violated, the lessor may terminate the tenancy agreement without notice.

2.6.1.4. Leasing agreement (leasing nieruchomości)

By a leasing agreement, the financing party undertakes, within the scope of operations of its enterprise, to acquire a property from a specified transferor and to hand it over to the user to use for a defined period. In exchange, the user commits to pay the installments agreed in the contract. The lessor retains ownership of the property, however, when the contract expires, the lessee has a right to take over the ownership of the property. In practice, there are two main types of the leasing agreement:

- ▶ operating leasing - in this type of leasing the subject of lease agreement remains the asset of the lessor who makes the relevant depreciation write-offs. After the end of the leasing term the lessee may purchase the subject of the agreement for remuneration. An

operating lease is commonly used to acquire equipment on a relatively short-term basis;

- ▶ financial leasing - in this type of leasing the lessor remains the legal owner of the asset, however, it is the lessee who makes the depreciation write-offs. The transfer of an ownership of a subject of a leasing agreement after its termination may be stipulated directly in that agreement.

The duration of the financial leasing contract is usually longer than the operating leasing and similar to the economic utility of the subject of leasing.

There is also another form of the leasing agreement which is often used in the real estate market called sale and lease-back. The essence in this case is the sale of property by the owner to a leasing company. Afterwards, the leasing agreement is signed between the same parties allowing the previous owner to use the property as the lessee. This operation allows the release of funds and gives the opportunity to invest them in other activities. More detailed legal and tax comments are presented in section 2.8.

2.6.1.5. Property management agreement

Property management is a professional activity, regulated in the Act on Property Management. Management of a particular property is based on the property management agreement between the owner of the real estate and the property manager. The agreement for property management should be concluded in writing, otherwise null and void.

The property manager is required to have a compulsory insurance of civil liability for damage caused in the course of activities.

2.6.2. Tax implications

Income subject to tax

Taxable income comprises the entire income generated from business activities (trade or services). Taxable income is calculated on the basis of accounting records prepared in accordance with Polish accounting standards after significant adjustments relating to the tax base. Taxable income is as a rule recognized for tax purposes on an accrual basis. The applicable tax rate is 19%.

Calculation of taxable income

Taxable revenues minus tax deductible costs constitute the tax assessment base. The costs are deductible if they were incurred for the purpose of revenue earning or maintaining/securing the source of revenue. For the exploitation of real estate, the most important costs, such as interest payments, the costs of exploitation and maintenance and depreciation write-offs, are considered tax deductible. Polish tax rules specifically exclude certain expenses from tax deductible costs. For example, doubtful receivables can only be deducted under very strict conditions. Also business entertainment expenses (e.g. the costs of representation) are non-deductible.

Loss carry forward rules

Polish legislation provides for carrying forward tax losses over five consecutive tax years following the year when the loss was

incurred. The amount which can be utilized in any of these five years cannot exceed 50% of the total loss, however.

Example:

Year	0	1	2	3	4	5	6
(Loss)/ profit	(100)	60	10	10	20	5	20
Loss utilised	-	50	10	10	20	5	-
Carry forward	-	50	40	30	10	0	-
Effective tax base	-	10	0	0	0	0	20

Total loss effectively carried forward: 95,
unutilized loss: 5.

Tax losses cannot be carried forward following certain legal transactions involving the company (e.g. mergers where the losses pertain to entities which no longer exist after the merger). There is no tax loss carry back.

Depreciation rate for real estate

The standard depreciation rate for most new buildings for tax purposes is 2.5% per year. Hence, the costs of real estate investment are generally deducted over a period of 40 years. Newly acquired buildings, used previously by a former owner, can be depreciated for tax purposes during the period equal to the difference between 40 years and the number of years that have passed since the building was put into use for the first time (that period cannot be shorter than 10 years). Land is not subject to tax depreciation.

If residential buildings constitute fixed assets used for business purposes (e.g. if

they are leased) they are depreciated at a rate of 1.5% per year.

Under certain circumstances it may be worth carrying out a cost split analysis of investment expenditures prior to putting a building into use. This is because some machinery may – under specific regulations – be excluded from the value of the building and be treated as separate fixed assets depreciated at higher rates (4.5% – 20% per year). This could lead to significant tax savings as the costs incurred could be deducted over a shorter period of time. A cost split analysis should be also possible in case of the purchase of an already developed building.

Calculation of the depreciation base

The depreciation base consists of all costs incurred in making the investment: construction costs, building materials, designs, interest and foreign exchange differences accrued during the construction period, commission and potentially non-recoverable input VAT related to the building incurred before it was put into use. As the value of the land is not subject to depreciation, it is then important to determine the value of the land and the value of the building separately.

VAT implications of renting out real estate

Rental income is subject to 23% VAT. This VAT is added to the rent due and is payable by the lessee to the lessor. If the lessee is a regular VAT payer, he can deduct the VAT paid in the rent invoice from his output VAT liability resulting from taxable activities.

If the lessee performs VAT exempt business activities, the input VAT on the rent is irrecoverable. For example, the activities of banks, financial institutions and insurance companies are exempt from VAT.

If the lessee performs exempt activities, as well as taxable activities, then the input VAT on the rent can be deducted proportionately on the pro rata basis computed for a given year.

Beginning of 1 January 2016 preliminary pro rata must also be taken into account, which might result in limited recovery of input VAT related both to economic activity and non-business activities.

Rental of residential units for housing (but not the rental of residential units for the purposes other than housing) is VAT exempt.

Real estate tax

Real estate tax is charged to the owner (or in some cases the holder) of the land or buildings and infrastructure which are used for business activities. The local authorities set the real estate tax rates and collect the taxes. However, in 2017 local authorities are bound by the following maximum PLN yearly tax rates:

- ▶ for land, PLN 0.89 per m² of land;
- ▶ for buildings, PLN 22.86, per m² of the usable surface of a building;
- ▶ for infrastructure (e.g. roads, pipelines), 2% of the value of the infrastructure calculated according to specific regulations (initial value determined for the purposes of tax depreciation).

Local authorities may differentiate between tax rates for different types of activities or locations and grant exemptions for certain types of real estate.

2.7. Exiting the investment

The investor's choice of exit strategy will be predominantly tax driven, and it is important at the outset of the investment process to have a clear idea of the possible exit mechanics. The due diligence findings made during the acquisition phase are likely to bear relevance to the question of which exit strategy to choose, and should be given proper consideration, so that the investor's position on exit will be as strong as possible.

Generally, the exit may be structured as an asset or share deal. The legal and tax consequences of both are presented in section 2.4.



A stack of papers and a yellow folder on a wooden desk. The papers are white and stacked neatly. The folder is bright yellow and is partially open. The desk is made of light-colored wood. The background is a soft, out-of-focus grey.

2.8. Sale and lease back

Legal aspects

A sale and lease back transaction consists of two stages. The first stage assumes selling the target real property by the seller to the purchaser. In the next stage the seller concludes the agreement on the lease of the real property from the purchaser. As a result of the sale, the owner (or perpetual usufructuary) of the real estate changes. However, due to leasing the real property back, the real estate remains under the operational control of the original party (the seller).

From the legal perspective it is important to secure the sellers' interest already in the first stage of the transaction, i.e. to establish the obligation of the purchaser to lease the real property back in the agreement on the sale of the real property. It is also important for both parties to agree details of the lease (duration, price, etc.) as soon as possible, especially if the seller and the purchaser do not belong to the same capital group.

The main advantage of such a sale and lease back operation is the release of the seller's capital as a consequence of the sale of the real property. This capital may be thereafter used e.g. for investment purposes. However, the decision on

choosing such a solution shall be made on detailed calculation of all the costs related, including the lease costs.

Tax implications

If a sale and lease-back transaction is structured as an operational lease, the buyer / lessor is in most cases the owner, and will be able to depreciate the value of the investment at the standard depreciation rate of 2.5%. Accelerated depreciation for used buildings can be considered in some cases. Other costs related to the maintenance and exploitation of the building are tax-deductible for the lessor.

If, under a sale and lease-back contract, the real estate asset which is the subject of the contract is sold at a higher price than its net book value, a taxable capital gain will occur. Under Polish legislation,

it is not possible to defer the taxation of such a capital gain in order to use it for reinvestment.

A sale and lease-back arrangement has an advantage for the seller / lessee that the lease payments are fully tax deductible as costs incurred for the purpose of earning revenue. By contrast, for the borrower party to a normal direct financing arrangement, only the interest payments made on the loan are tax-deductible.

The repayment of capital is not a tax-triggering event. Under a direct financing arrangement secured by a mortgage, the debtor would still be the owner of the real estate. As such, the debtor would be unable to depreciate the value of the land. Under a lease contract, the lease payments are partly a compensation for the use of the land. Therefore, payments for the use of the land are tax-deductible for the benefit of the lessee.





2.9. Due diligence as part of the acquisition process

The main purpose of the due diligence process is to provide investors with a complex overview of the situation of the real estate being the subject of the acquisition from the legal, financial and tax perspective. Taking into account the specific status and features of a given real estate, a broader due diligence review, conducted by technical and environmental experts, may be recommended.

2.9.1. Legal due diligence

The due diligence process is all about mitigating investment risks. In practice, the legal due diligence review consists in gathering information and should provide the potential investor with a comprehensive view of the legal issues regarding the real property he considers acquiring.

By the end of the due diligence process, the investor should have a fair idea of whether the real estate is worth investing time and money. In this regard, a due diligence should be as comprehensive as possible.

The scope of the legal due diligence will depend on the structure of the deal. In a share deal, the scope of the due diligence will generally be wider than that required for an asset deal, as it needs to cover all the aspects related to the activity of the

company. In case of an asset deal mostly the legal status of the real estate should be taken into consideration and examined carefully.

Within the legal due diligence, the review bases mainly on data and information provided by the seller and on enquiries and discussions with the seller and/or the management of the target. Additionally, publicly available sources (such as data in court registers) are explored. In practice, the due diligence regarding the real estate usually covers review of the following matters:

- ▶ legal documents related to the seller's title to the real estate in use (e.g. real estate acquisition agreements, extracts from the land and mortgage register, extracts from the land and buildings register, etc.);
- ▶ documents related to the encumbrances over the seller's real estate;
- ▶ lease agreements for the real estate concluded by the seller;
- ▶ development and construction documentation;
- ▶ planning and zoning issues;
- ▶ utilities supply documentation;
- ▶ environmental issues (permits, licenses etc.).

Review of other aspects is usually agreed with the seller and strictly depends on the type of transaction (share or asset deal).

The aim of the legal due diligence review of the real estate is to identify areas of investment risks but also other specific legal aspects regarding performing of

business activity on the real estate and its sale. Below we present certain issues that need to be analyzed during the due diligence process and which may influence the structure of the transaction, or even a decision on entering into the transaction.

Local Spatial Development Plan

The local spatial development plans are issued by the local authorities (municipalities) for a given area. Generally, local spatial development plans are local acts and define conditions for land use and destination and the scope of business that can be conducted within a given area. Municipalities issue local spatial development plans with a view to local development and public interest. Development of an investment on the real estate is possible provided that buildings, plants and other industrial facilities comply with the relevant local spatial development plan for a given area. Therefore, it is essential to establish during the due diligence process whether there is a local local spatial development plan covering the area where the targeted real estate is located and if so, what are the conditions of this local spatial development plan in order to confirm whether it will be possible to perform the planned investment. Please refer to the section 2.5.1. for more detailed information regarding the local spatial development plan.

Within the review of the local spatial development plan, in particular, the issues of the conservation and historic preservation zones and agricultural land should be verified.

Conservations and historic preservation zone

The zoning master plan may provide that the area where the real estate subject to the potential investor's interest is located falls within a conservation and historic preservation zone where some specific rules apply in order to protect the historical monuments located in the zone. Depending on the type of the real estate and its historical status there may be additional requirements and limitations established by the provisions of law.

Revitalization

The Revitalization Act entered into force at the end of 2015. Under the act, revitalization is the comprehensive process of rescuing degraded areas from crisis through integrated actions for the benefit of the local community, space and economy. A degraded area is a terrain in which there is a concentration of negative social phenomena as well as, for example, degradation of the technical condition of buildings, a low level of transit service, and poorly adapted urban planning solutions.

Under the new legislation, it is necessary for the commune authorities to pass local government law in the form of a resolution in establishing a revitalization zone or a special revitalization zone.

It should be noted that the Revitalization Act added new cases, when a commune may exercise the right to pre-emption of real estate, i.e. in case of transactions the subject of which is a real estate located within a revitalization area or special revitalization zone. In case of considered

acquisition of real estate located in one of those plans, an investor should bear in mind the pre-emption right of a commune.

Agricultural land

The local spatial development plan may provide that the real estate is assigned for agricultural activity. As a rule, the development of real estate designated for agricultural use requires a special procedure involving the modification of the local spatial development plan. Such a procedure may be time-consuming and is connected with the risk of third parties challenging the proposed changes to the plan. Additionally, real estate classified as agricultural land in the Land and Building Register, but not covered by the master plan, should be also excluded from agricultural production by obtaining an administrative decision from the relevant authority.

It should be noted that after exclusion of the area from agricultural activity an annual fee has to be paid for ten years (see comments below).

An investor considering acquisition of agricultural real estate should also bear in mind existing restrictions relating to purchase of an agricultural land. Regulations in force provide for many specific legal restrictions and limitations and new legislation are to further restrain entities other than individual farmers from purchasing an agricultural real estate (*please see comments in section 2.4.2*).

Restitutions claims

Under the nationalization laws passed in Poland after the Second World War, many

real properties and functioning enterprises (including their real estate assets) were “nationalized” (or “communalized”). However, currently, there are no specific reprivatisation laws in force in Poland to deal with the restitution matters and claims. As a result, the legal status of nationalized properties is quite often subject to uncertainty. Under specific conditions, former owners or their successors may apply to civil courts and initiate proceedings aimed at the restitution of such real estate. As the current owner benefits from the land and mortgage register’s public credibility warranty, the outcome of such claim will primarily depend on the apparent good faith of the current and previous owner at the time they acquired the property. Nevertheless, this issue needs to be subject to analysis during the due diligence.

In Warsaw, on the basis of the special “Warsaw decree” on land ownership of 1945, the City of Warsaw gained ownership rights to the major part of real estate in the city. However, subject to specific conditions, former owners of the real estate were granted the right to apply for obtaining usufruct rights to real estate or compensation. Currently, such applications which were not resolved or were resolved in contravention of the law may be the base for successful claims for reestablishing the rights of the previous owners or their successors. In consequence, it is essential during the due diligence to investigate whether any such proceedings are pending with respect to the target property located in Warsaw.

After the judgement of the Constitutional Tribunal dated 19 July 2016, the Act

on amendment of the Act on Property Management and the Family and Guardianship Code came into force on 17 September 2016. This act provides limitations of restitution of ownership of real estate nationalized under the Warsaw decree or transferring claims for reestablishing the rights for such.

According to the new act, in case when the real estate in Warsaw is e.g. assigned or used for public purposes, the Capital City of Warsaw may refuse to establish the right of perpetual usufruct to a previous owner of this real estate.

A new provision is granting the State Treasury and the Capital City of Warsaw right of pre-emption in the event of the sale of rights and claims arising from the Warsaw decree and claims for the establishment of perpetual usufruct to the previous owner of real estate located in Warsaw. The pre-emption right also applies in case of sale of perpetual usufruct right established by the way of satisfying rights and claims arising from the Warsaw decree.

As a result, the new regulation should be taken into consideration during the investment process.

Fees - holding the real estate

Zoning fee

Zoning fee (“*Opłata Adiacencka*”) is a charge which may occur with regard to the increase of the value of the real property resulting from:

- ▶ division of the property;
- ▶ merging and subsequently dividing the property;

- ▶ the construction of infrastructure with the use of public funds (placing water pipes, sewage pipes, heating systems, electricity gas and telecommunications facilities).

The amount of the fee depends on the amount of the increase in the property's value and is usually established based on an opinion of an independent expert determining how much the value of property has increased by.

The amount of fee shall not be higher than 50% (with respect to the division following a merger and the construction of infrastructure with the use of public funds) and not higher than 30% (with respect to a division) of the increase in value of the property.

Additionally, adoption of the local spatial development plan may also lead to an increase in real estate market value, e.g. when a forestry land or an agricultural land is reclassified in the local spatial development plan into public roads, its value usually increases. In such cases the zoning fee ("Renta Planistyczna") may be established as a percentage (not higher than 30%) of the increase in value of the land calculated as at the date of the transfer of the given real estate.

The percentage for calculation of the zoning fee should be provided for in the local spatial development plan. The zoning fee is payable by the vendor in the case of a transfer of the property within 5 years from the day when the local spatial development plan came into force.

Exclusion from agricultural production fee

Entrepreneurs are often interested in changing the purpose of use of the agricultural and forest land in order to develop the land and realize an investment. Exclusion from agricultural production is subject to an initial fee and subsequent annual payments. The value of such payments depends on the:

- ▶ area of the land subject to exclusion;
- ▶ quality of the land (class of soil);
- ▶ market value of the land subject to exclusion.

It should be noted that if the land excluded from agricultural production is sold, the obligation to pay the annual fees passes to the purchaser.

Environmental issues

Introduction

Polish environmental law affects the conduct of economic activity for most business entities. One of the most important requirements imposed by the environmental law is the requirement to obtain permits related to the rules of having an impact upon the environment. It is usually examined during the due diligence whether the seller (or the target company) fulfills the environmental law requirements.

Permit requirements

Environmental permits can be basically divided into two groups. The first one includes permission obtained in the course of the investment process and the second

group includes permission related to the use of the property.

In certain circumstances Polish environmental law imposes an obligation to obtain an integrated permit, which includes a number of permits governing the use of the environment. The obligation to obtain integrated permit relates to, inter alia, the following branches of industry: metallurgy and steel industry, the mineral industry and the chemical industry.

Besides, it is important to take into account the permissible level of noise. Permission is required only if the noise level exceeds the noise limits, which should be evaluated taking into account the provisions of the local plan.

Liability for contaminated land

Under the Polish law there are two regimes of liability for land (soil) contamination, depending on the period from which the contamination originates (with the border line being 30 April 2007). A current holder (in particular owner or perpetual usufructuary), revealed in the Land Register, is liable for soil contamination which occurred prior to 30 April 2007 or may be attributed to activity completed prior to that date, even if such holder did not actually cause the contamination.

Parties to the sale agreement cannot contractually exclude the above mentioned administrative liability of the purchaser for clean-up of contaminated land so when a potential investor intends to buy a property (especially one that was used for industrial purposes) a detailed study on pollution of the land is required.

To secure purchaser's interest, the seller of contaminated land may agree to reimburse the purchaser with expenditures borne for the clean-up.

The situation is different for "new" land contamination, i.e. any soil damage, which occurred after 30 April 2007 or could be attributed to an activity completed after that date. An entity using the environment (i.e. an entity who has relevant permits to operate and use the environment) is liable for any such damage.

Environmental impact assessment

According to the section 2.5.1 where the environmental decision and environmental impact assessment where described, in some cases - especially for large investments an environmental impact assessment proceeding may be required.

2.9.2. Financial due diligence

Not many investors perform due diligence when completing a real estate transaction. Often the investor's own internal procedures require due diligence to determine whether or not the transaction is in the best interest of the investor.

Although for transactions of a smaller scale this may not be a good way to evaluate a deal, most investors understand the value of expert outsourced financial due diligence services. This rings especially true when taking into account larger time-sensitive transactions (auction processes for example).

Although some investors choose to forego due diligence when acquiring new assets,

they should understand that financial due diligence can indicate how the acquired assets will affect metrics such as revenue and net operating income. In addition, due diligence is able to discover unforeseen problems such as discrepancies between the amount paid for rent as described in lease agreements vs. the actual amount being paid per the accounting books.

A buyer usually makes use of financial due diligence to assist in identifying major issues concerning a transaction:

- ▶ the value of the property's NOI taking into account the existing lease portfolio
- ▶ any provisions in the lease that affect the NOI adversely (for example, discounts on rent for any given period of time or for improvements made by lessee)?
- ▶ bookkeeping in use being adequate for the business, and how does it look next to the investor's bookkeeping procedures
- ▶ lessee ever being late with the rent, or it taking longer to collect rent;
- ▶ charges made by the lessee being enough to cover the costs of maintaining the building; and any service charges not settled for any reason
- ▶ critical bookkeeping procedures being applied consistently and appropriately;
- ▶ the influence of the bookkeeping procedures on the financial figures;
- ▶ assuring that the creation and level of management information is accurate and adequate for the business being considered;
- ▶ evaluating the contractual obligations the business has and their influence on profitability and cash flow;
- ▶ evaluating critical problems influencing earnings position;
- ▶ recognition of the need for cost recharges incurred and focus on areas for improvement;
- ▶ recognizing the "normal" working capital and cash flow tides of the business and probable funding needs down the line;
- ▶ making sure construction costs are properly reflected in the bookkeeping records;
- ▶ recognizing the net asset base for acquisition; addressing possible balance sheet valuation discrepancies; making sure everything has been adequately addressed in evaluating the underlying earnings;
- ▶ comparing the rent roll against the rental agreements and bookkeeping records;
- ▶ comparing the service charges incurred against the bookkeeping records; and
- ▶ going over rental agreements to identify balance sheet liabilities.

Analyzing financial issues

The items listed below should be considered when seeking to resolve the previously mentioned issues concerning financial due diligence:

- ▶ the financial figures being viable: can the figures be traced back to its origin reliably;

2.9.3. Tax due diligence

Tax due diligence, in general, focuses on assessing material tax risks pertaining to assets or shares by reviewing the tax position of the target company. By identifying tax risks during due diligence conducted before the transaction, the investor may seek protection or indemnification from the seller.

From a tax perspective, it is also important to ensure that the appropriate tax structure is used, which usually involves a pre-transaction study and the preparation of the transaction structure in accordance with the Polish and international tax regulations. In addition, it can also include an assessment of the tax implications of a future exit scenario.

Acquisition of assets

In the case of an asset deal deemed to be the acquisition of business as a going concern or a viable part of that business, the acquirer may be held liable for the outstanding tax liabilities of the seller. This liability is excluded if the acquirer could not have become aware of the seller's tax arrears despite acting with due diligence in attempting to identify such tax arrears. Performing a tax due diligence review is thus a way to limit or exclude such liability.

This liability is in practice of a 'subordinated' nature, as even if a formal decision declaring that the acquirer is liable for the seller's tax arrears is issued, the claim against the acquirer may crystallize only if the enforcement procedure against the seller is ineffective (and tax claims against the seller are not satisfied).

According to the tax regulations the acquirer (with the seller's consent) or the seller may submit to the tax authorities a formal request for a certificate which lists all the tax liabilities which are transferable to the acquirer. The acquirer is then liable only up to the value of the tax liabilities presented in the certificate.

In the case of a sale of single assets (not constituting a going concern), the acquirer should not be liable for the outstanding tax arrears of the seller. However, if the transaction is reclassified into a sale of a going concern, the buyer might then be held liable for the seller's undisclosed tax liabilities.

Acquisition of shares

In the case of a share deal, all the potential outstanding liabilities that are not statute barred remain with the acquired company. As a consequence, the acquirer faces the possibility of incurring an economic loss on the transaction if undisclosed tax liabilities become apparent afterwards. Tax due diligence is therefore conducted to allow the acquirer to assess and minimize this risk.

Generally, the period of limitation for tax liabilities is 5 tax years following the year in which the tax is payable. In practice this means that from the perspective of 2017 there is still a tax risk in relation specifically to a target's corporate income tax payments for 2011-2016, and to other tax liabilities, in general, for 2012-2016.

Tax issues analyzed

The scope of a tax due diligence review depends on the structure of the planned transaction.

In the case of an asset deal, the scope of due diligence depends on the subject of the transaction and the extent to which the acquirer may be liable for the seller's tax liabilities.

In the case of a share deal, as the acquirer faces the full impact of any tax liabilities assumed, full due diligence is usually conducted.

The tax due diligence in case of a share deal usually covers the following areas:

- ▶ review of tax returns for periods previously filed and review of tax calculations for periods that are not yet filed with the tax authorities;
 - ▶ review of the results of past tax audits to detect tax risks for periods that are still open for tax audits by the tax authorities;
 - ▶ review of any obtained tax rulings;
 - ▶ review of any losses carried forward, tax credits and special tax privileges to identify related tax risks for unaudited periods and to assess whether such tax benefits will be available post transaction;
 - ▶ review of withholding tax procedures and exemptions available;
 - ▶ review of significant historical reorganizations and one-off transactions and their impact on the tax accounts;
 - ▶ review of intercompany transactions and present transfer pricing policy in the company;
- as well as an examination of areas typical for a real estate company, such as:
- ▶ the existing debt financing structure (e.g. debt push down schemes), thin capitalization and other pending restrictions on the tax deductibility of interest payments on the debt;
 - ▶ any large differences between book and tax basis of assets, analysis of the deferred tax calculations, in particular identification of any deferred tax liability, e.g. from accrued foreign exchange gains;
 - ▶ rules for capital expenditure recognition and the impact of foreign exchange differences on the initial value of fixed assets for tax depreciation purposes;
 - ▶ policies for the tax depreciation of assets, including a review of cost segregation schemes;
 - ▶ cash incentives offered to lessees such as a rent free period or step-up rent and their impact on the tax accounts;
 - ▶ treatment of the investment costs incurred by lessees (leasehold improvements) when the lease expires;
 - ▶ tax recognition of management charges payable by special purpose vehicles to servicing companies within the group;
 - ▶ any step-up in the value of the real estate performed;
 - ▶ review of input VAT refunds in the investment phase; and
 - ▶ policies for real estate tax.

A review of the sale and purchase agreement (SPA) for the acquisition of a real estate target usually covers the following tax points:

- ▶ review of the tax definitions in the SPA, and of the tax representations and warranties;
- ▶ review of the tax indemnity clauses in the SPA; and
- ▶ analysis of the SPA from the perspective of other protection available against tax exposures.

2.9.4. The use of due diligence results when negotiating

After the whole process of due diligence, the investor gets a general financial and tax risk overview, which makes up the origin of the information for negotiations with the seller and assists in adjusting the financial model for valuation.

This can be used to get a decrease in price in order to alleviate possible tax liabilities and can be used when writing warranties and damages in the SPA.

The results may directly affect the composition of the transaction, for example, transforming a share deal to an asset deal; they may also be used for post-acquisition tax planning.

Along with the tax and financial due diligence results, the legal due diligence review should assist the buyer in determining whether or not to complete the transaction, and if so, in what form. Due diligence investigations let the buyer's legal team construct the conditions of the deal so that the buyer is afforded with an adequate amount of comfort and protection. The legal team will then be in a position to address specific problems by asking for further explanations and/or promises or warranties from the seller. The legal team can also evaluate whether or not such promises or warranties need to be covered by an indemnity clause or other legal language allowed under the Polish law.

When taken together, the financial, tax and legal due diligence results are a very strong tool which can very easily have an influence on the final result of negotiations, and, in particular, how much the buyer will ultimately pay.



Accounting and auditing

3.1. Introduction to the accounting framework in Poland

Polish accounting is regulated by the Accounting Act of 29 September 1994 (the Accounting Act). The Minister of Finance has also issued several regulations which cover specific accounting areas such as financial instruments, consolidation, accounting principles for banks, insurance companies, investment funds and pension funds. Since 1994, the Accounting Act has undergone significant changes to bring Polish accounting regulations closer to the International Financial Reporting Standards (IFRS). However, the differences between the Accounting Act and IFRS, mainly following IFRS developments in last decade, continue to exist as noted in Section 3.7 below. The following information applies to financial statements prepared for the periods beginning on or after 1 January 2017.

In order to help implement the Accounting Act, the Polish Accounting Standards Committee ("the Committee") prepares and issues National Accounting Standards (KSR). As at 1 January 2017, ten National Accounting Standards had been issued in regard to different topics including cash flow statement, leasing, impairment of assets, concession accounting, recognition and presentation of changes in accounting policy, estimates, and correction of errors and post balance sheet events.

The Committee has also issued several position papers (not referred to as standards) in regard to e.g. accounting for emission rights, inventory count, inventory valuation, green certificates, financial statements of housing cooperatives and some aspects of bookkeeping. In the areas not regulated by the Accounting Act or National Accounting Standards, reference may be made to IFRSs. National Accounting Standards and the Committee's position papers are available on the website of the Ministry of Finance.

The Accounting Act permits or requires some Polish entities to apply IFRS as adopted by the EU as their primary basis of accounting, rather than applying the

accounting principles of the Accounting Act. Those regulations are summarised in the following table:

	Standalone financial statements	Consolidated financial statements
1. Entities listed on a regulated market in Poland or other European Economic Area (EEA) country.	Choice	Required
2. Banks (other than those included in points 1, 3, 4 and 5).	Not permitted	Required
3. Entities that applied for a permission to list on regulated market in Poland or other European Economic Area (EEA) country.	Choice	Choice
4. Entities that are part of a group where the parent prepares consolidated financial statements for statutory purposes in accordance with IFRS as adopted by EU.	Choice	Choice
5. Branches of a foreign entrepreneurs that prepare separate financial statements for statutory purposes in accordance with IFRS as adopted by EU.	Choice	n/a
6. Other entities.	Not permitted	Not permitted



3.2. Accounting records

The provisions of the Accounting Act and related regulations are applicable to, among others, companies and partnerships that have their registered office or place of management in Poland. For those entities that apply IFRS as the primary basis of accounting instead of Polish principles, the following sections of the Accounting Act still apply:

- ▶ Chapter 2 on bookkeeping
- ▶ Chapter 3 on inventory count
- ▶ Chapter 6A on report on payments made to government
- ▶ Chapter 7 on auditing, filing with the appropriate court register, providing access to and publication of financial statements
- ▶ Chapter 8 on data protection
- ▶ Chapter 9 on criminal liability
- ▶ Chapter 10 on special and interim provisions and
- ▶ Article 49 in regard to directors' report.

Each entity is obliged to maintain its accounting books and other documentation which, in particular, comprises:

- ▶ A description of the entity's accounting principles
- ▶ Rules for keeping subsidiary ledgers and their link to general ledger accounts.

Accounting records should be kept, and financial statements drawn up, in the Polish language and presented in the Polish currency.

It should be noted that the violation of the Accounting Act requirements by a person responsible for drawing up the financial statements (usually the Management Board and Supervisory Board) may be recognised as a criminal offence, which is punishable by imprisonment for a term not exceeding two years, by a fine, or both.

The regulations, summarised in Chapters 3.3.- 3.7 below, apply to all entities in general. Certain types of entities such as banks, insurers, or investments funds might be governed by specific regulations in relation to the measurement and impairment of assets (such as financial instruments) or financial statements. Furthermore, there are exemptions and simplifications provided for small and micro entities which are explained in Chapter 3.8.

3.3. Major principles in regard to recognition and measurement of assets and liabilities

The Accounting Act requires companies to recognise and present the transactions in the financial statements, in accordance with their economic substance.

Entities may elect to depart from a regulation of the Accounting Act, and adopt its own accounting policy, if that regulation results in presentation of the financial position and performance not being true and fair. The justification for such departure and its impact on the financial information should be disclosed.

An asset is recognised if it is probable that the future economic benefits that are attributable to the asset will flow to the company.

Intangible assets

Intangible assets are recorded initially at their purchase price and then are amortised over their useful lives or written down for impairment. The goodwill and development costs shall be amortized over their



economic useful life or, when the economic life cannot be reliably determined, over the period not exceeding 5 years.

Property, plant and equipment

Items of property, plant and equipment are measured at acquisition or production cost, less accumulated depreciation and impairment. Land is measured at acquisition cost less impairment.

Tangible assets may be revalued in accordance with separate regulations. However, the last revaluation was allowed on 1 January 1995, based on a decree issued by the Ministry of Finance.

The result of revaluation of a fixed asset is reflected in the revaluation reserve. After the fixed asset is disposed, the amount remaining in the revaluation reserve is transferred to the reserve capital. The costs incurred on an asset already in use, such as repairs, overhauls or operating fees, are expensed as incurred.

However, the costs that increase the expected future economic benefits of a given fixed asset beyond the original expected benefits, are capitalised and increase the carrying amount of the asset.

Tangible assets, except for land, are depreciated on a straight-line or other systematic basis over the assets' estimated useful lives, or if shorter over the term of right. Borrowing costs (interest) which relate to the construction, adaptation, assembly or improvement of a tangible asset or intangible asset are capitalised as part of the initial cost of the asset, where those borrowings were taken out for that

purpose. Foreign exchange gains/losses on such borrowings are also capitalised.

Investment property

The definition of investment property includes properties, which are not used by the entity for its own purposes, but which are held for the purpose of generating profits through capital appreciation and/or proceeds from rental. Investment property is carried at a purchase price less depreciation and impairment write-offs (cost model) or at its fair value (fair value model). Each entity has a policy choice for the valuation model used.

Fair value model

If the fair value model is selected, the changes in the fair value of investment property are recognized in the income statement as other operating costs or other operating income (before the amendments to the Act which came into force on 1 January 2009 changes in the investment property fair value were recognized through equity).

Cost model

If the cost model is applied, investment property is recognized and subsequently measured at acquisition or construction cost, less accumulated depreciation and accumulated impairment write-offs. Land is valued at its acquisition cost reduced by impairment write-offs. Investment properties, except for land, are depreciated on a straight-line or other systematic basis over the investments' estimated useful lives.

Borrowing costs which relate to the construction, adaptation, assembly or improvement of an investment property are capitalized as part of the cost of the asset, where those borrowings have been drawn down for that specific purpose through to the date of the completion of the construction or improvement.

Financial instruments

Financial instruments are initially recognised at acquisition cost (price), being the fair value of the consideration given. The transaction costs are included in the initial value.

After initial recognition, financial instruments (including derivatives and embedded derivatives) are classified into one of the following four categories and measured as follows:

- ▶ Investments held to maturity - at amortised cost, calculated using the effective interest rate
- ▶ Originated loans and receivables - at amortised cost, calculated using the effective interest rate
- ▶ Held for trading investments - at fair value with any unrealised gains/ losses recorded in the profit and loss account
- ▶ Available for sale investments - measured at fair value with unrealised

gains/ losses recognised in the profit and loss account or in the revaluation reserve in equity until the investment is sold or impaired at which time the cumulative gain/ loss is included in the profit and loss account - the policy to be selected.

In separate financial statements of a parent entity, investments in subsidiaries, associates or joint ventures are carried at cost, equity accounted, or at fair value. If carried at fair value, all changes are recognised in the revaluation reserve in equity.

The fair value of financial instruments traded on an active market is measured based on that market's listed prices at the balance sheet date. If there is no such a listed market price, the fair value is estimated based on the listed market price of similar instruments or on the expected cash flows.

Hedge transactions

Transactions involving derivative instruments to hedge a financial risk are classified as three types of hedges - cash flow hedges, fair value hedges and a hedge of a net investment in a foreign subsidiary. Hedge accounting applies as presented in table.

	Cash Flow Hedges	Fair Value Hedges	Hedge of a net investments in a foreign subsidiary
Hedged item recognised	In accordance with other standards.	At fair value, with all changes recognised in the income statement.	In accordance with other standards.
Hedging instrument recognised	At fair value, with effective part of all changes in equity.	At fair value, with all changes recognised in the income statement.	At fair value, with effective part of all changes in equity.

Inventories

Inventory is measured at lower of cost and net realisable value. Capitalisation of financial costs in the inventory is permitted if the production process requires a necessary lengthy period of preparations.

Foreign currency transactions

Transactions denominated in a foreign currency (i.e. not Polish Zloty) are translated into Polish Zlotys at the actual exchange rate applicable at the date of the transaction or, if the actual rate is not known, at the rate published by the National Bank of Poland.

At the balance sheet date, assets and liabilities denominated in foreign currencies (other than shares in subsidiaries and associates carried using equity method) are re-translated at the exchange rate published by the National Bank of Poland.

Foreign exchange differences arising on revaluation are generally recognised as financial income or financial expense. For

certain types of long-term investments denominated in foreign currencies gains are recognised in the revaluation reserve.

Foreign exchange differences relating to liabilities financing assets under construction form part of the cost of those assets.

Equity

Issued instruments are classified as equity or liability based on the terms and the definitions of liability and equity. Additional capital contributions – regardless of the terms of redemption are classified as equity. The share capital presented in the balance sheet should be equal to the amount registered in the registration court and based on the shareholders' resolution.

Deferred tax

Deferred tax is recognised, using the liability method, on all temporary differences at the balance sheet date between the tax bases of assets and

liabilities and their carrying amounts for financial reporting purposes. Deferred tax liabilities are recognised for all taxable temporary differences. Deferred tax assets are recognised for all deductible temporary differences and unused tax losses, to the extent that it is probable that taxable profit will be available, against which the deductible temporary differences and unused tax losses can be utilised.

Deferred tax assets and liabilities are measured at the tax rates that, according to provisions enacted by the balance sheet date, will apply in the period when the asset is realised or the liability is settled. The Income Taxes Standard requires that additional tax credits given to companies operating in Special Economic Zones are recognised as government grants i.e. giving rise to a deferred income and deferred tax asset. Such deferred income is to be amortised over the useful life of the asset.

Leases

A lease is classified as a finance lease if at least one of the following seven conditions is met:

- ▶ The legal title is transferred upon lease expiry
- ▶ The asset may be purchased by the lessee at a price lower than the market value upon lease expiry
- ▶ The lease term is longer than 75% of the economic useful life of the leased asset
- ▶ The sum of the discounted minimum lease payments is higher than 90% of the market value of the leased asset as at the lease inception
- ▶ The lease can be extended on more favourable terms
- ▶ If cancelled, the lessee bears all cancellation costs
- ▶ The asset is adapted to the specific needs of the lessee.

Business combinations

Business combinations not under common control are accounted for using the purchase method. However, the pooling of interests' method might still be used for legal merger transactions under common control.



3.4. Financial statements

Financial statements must be prepared in the Polish language and expressed in the Polish currency. Financial statements consist of:

- ▶ A balance sheet
- ▶ An income statement
- ▶ A statement of cash flows
- ▶ A statement of changes in equity
- ▶ Notes to the financial statements (split into an introduction and additional notes).

A cash flow statement and a statement of changes in equity are only required by entities whose financial statements are subject to a statutory audit.

For some specialised types of entities additional exceptions or requirements might apply in relation to primary financial statements such as for example a summary of investments for the investment funds and alternative investment companies.

The format of the balance sheet, income statement, statement of cash flows, statement of changes in equity, and the contents of notes to the financial statements for entities preparing their financial statements in accordance with Polish GAAP are determined by the Accounting Act. Companies listed on the Warsaw Stock Exchange when preparing the financial statements in accordance with Polish GAAP are guided by specific regulations for public issuers. This includes reconciliation between the results reported in accordance with Polish accounting principles and those that would have been met if IFRS as adopted by the EU had been applied.





3.5. Financial reporting, publication and audit requirements

Financial reporting

All entities governed by the Accounting Act are obliged to prepare their standalone and consolidated financial statements (the latter ones only if criteria apply) for each financial year. The financial year need not be the calendar year. Listed companies are additionally obliged to publish semi-annual and quarterly reports. An entity must also prepare financial statements as at the date of the close of accounting records and as a result of other events leading to the termination of the activities of an entity, for example, the close of business (liquidation date).

The standalone and consolidated financial statements should be prepared within three months after the balance sheet date and approved within six months after the balance sheet date.

Directors' report

Specific entities, such as for example joint-stock companies, limited liability companies, selected partnerships, mutual insurance companies, co-operatives, state-owned companies, investment funds and investment companies prepare, in addition to the financial statements, a financial review by management - the management report (the Director's report). The scope of the report is defined in legal regulations and includes topics such as:

- ▶ Description of events that significantly impact upon the entity's performance and that occurred during the reported period and after its closing date till the date the financial statements are approved
- ▶ Predicted development of the entity
- ▶ Major achievements in the research and development area
- ▶ Actual and planned financial situation, including financial ratios
- ▶ Details about transactions in own shares
- ▶ Information on branches (business units)
- ▶ Financial risk management objectives and methods
- ▶ Key financial and nonfinancial efficiency metrics in relations to operations as well as information on employment and natural environment
- ▶ Information on the application of corporate governance rules (only public companies).

The Report on Payments to the Public Administration

The enterprises operating in the mining industry or logging the virgin forests and satisfying the criteria provided in the Accounting Act have to prepare an additional report on payments to the government together with the financial statements. The report presents the total payments to the governments of a certain country analysed by the level of public administration, type of payment, and certain project, if applicable.

Statement of non-financial information

The listed entities that exceed the given thresholds are also required to present a statement and a consolidated statement of non-financial information. This statement includes among others:

- ▶ Description of the business model;
- ▶ Key non-financial performance ratios;
- ▶ Description of social, environment, human rights and anti-corruption policies, the associated risks and the effects of application of those policies.

That statement may be published on the entity's web pages.

Publication requirements

Management is required to file the annual financial statements to the registration court together with the following documents:

- ▶ Auditor's opinion, if the statements were subject to an audit

- ▶ Shareholders' resolution on the approval of the financial statements and distribution of profit or coverage of loss
- ▶ Directors' report (if applicable)
- ▶ The report on payments to the public administration (if applicable).

If not approved within 6 months after balance sheet date, additional filling is required from the entities which have not managed to approve their financial statements in the prescribed dates.

Listed companies are also required to file their financial statements with the Polish Financial Supervision Authority including interim (quarterly and semi-annual) reporting.

Audit requirements

Polish statutory audit requirements apply to all annual consolidated financial statements and to the annual standalone financial statements of the following entities that operate as a going concern:

- ▶ Banks, insurance companies, reinsurance companies, pension funds, investment funds (including alternative, closed, open and specialised funds), investment fund management companies, joint-stock companies and public companies, payment institutions, brokerage houses and firms
- ▶ Other entities that meet at least two of the following three thresholds in the financial year preceding the financial year for which the financial statements were drawn up:

- ▶ Annual average employment (equivalent of 50 individuals employed full-time)
- ▶ Total assets as at the end of the financial year (the Polish Zloty equivalent of EUR 2.5 million or greater)
- ▶ Net sales including financial income for the financial year (the Polish Zloty equivalent of EUR 5 million or greater)

The statutory audit requirements also apply to entities after merger for the year when the merger occurred.

All statutory IFRS financial statements are subject to audit requirements.

There are also additional requirements in relation to audit or review of interim financial statements of public companies and investment funds.

Audits are governed by the relevant legal requirements in force which include:

- ▶ Chapter 7 of the Accounting Act
- ▶ Auditors Act
- ▶ National auditing standards issued by the National Council of Statutory Auditors
- ▶ Regulation (EU) No 537/2014 of the European Parliament on the council on specific requirements regarding statutory audit of public-interest entities

3.6. Consolidation

Consolidation requirements

A capital group is a group which comprises a holding company and its subsidiaries.

According to the Accounting Act, a holding company is a company that controls another entity.

A capital group draws up its consolidated financial statements on the basis of standalone financial statements of entities that belong to the group. Groups which, in the preceding and current financial years, did not exceed at least two out of three of the following thresholds before intragroup eliminations:

- ▶ annual average employment - equivalent of 250 individuals employed in full time
- ▶ total assets of all group entities - PLN 38.4 million
- ▶ total sales and financial income of all group entities - PLN 76.8 million

Or after intragroup eliminations:

- ▶ annual average employment - equivalent of 250 individuals employed in full time
- ▶ total assets of all group entities - PLN 32 million
- ▶ total revenue of all group entities - PLN 64 million

are exempted from drawing up the consolidated financial statements.



A subsidiary is excluded from consolidation if:

- ▶ The shares in such entity were acquired, purchased or otherwise obtained for the sole purpose of subsequent resale within one year from the date of acquisition
- ▶ There are severe long term restrictions on the exercise of control over the entity which prevent free disposal of its assets, including net profit generated by this entity or which prevent exercise of control over the bodies managing the entity
- ▶ It is impossible to get the information necessary for preparation of a consolidated financial statement without delay incurring unreasonably high cost (applies in exceptional cases only).

A subsidiary need not be included in the consolidated financial statements if the amounts stated in that entity's financial statements are immaterial in relation to the holding company's financial statements.

Consolidated financial statements

Consolidated financial statements comprise:

- ▶ A consolidated balance sheet
- ▶ A consolidated income statement
- ▶ A consolidated statement of cash flows
- ▶ A consolidated statement of changes in equity
- ▶ Notes to the consolidated financial statements (split into an introduction and additional notes).

Consolidated financial statements should be accompanied by a Group Directors' report

prepared by the Management Board of the holding company. Group Directors' report can be prepared together with a Directors' report of the holding entity as a single report.

Consolidated financial statements should be prepared at the same balance sheet date and for the same financial year as the financial statements of the holding company. If this date is not the same for all entities within the group, then consolidation may cover financial statements drawn up for a twelvemonth period different to the financial year, if the balance sheet date of those financial statements is earlier by no more than three months of the balance sheet date adopted by the group. Companies included in the consolidation should adopt consistent accounting policies and consistent methods of preparation of financial statements. If the accounting policies of consolidated entities differ from those applied for consolidation, then appropriate adjustments must be carried out at the consolidation level.

Methods to include entities in consolidated financial statements

A subsidiary (see Consolidation requirements) is consolidated using the full consolidation method. Jointly controlled entities are consolidated using a proportional consolidation method or accounted for using an equity method. Associates are accounted for using the equity method. When the associate prepares its consolidated financial statements, the equity method applies to the net consolidated assets of the associate.

A modern office lobby with a high ceiling, glass walls, and a polished floor. In the foreground, there are several white display stands with information. In the background, there are yellow armchairs and a glass-walled area. The lighting is warm and modern.

3.7. Principal differences between Polish Accounting Regulations and International Financial Reporting Standards

The main differences between Polish Accounting Regulations (PAR) and International Financial Reporting Standards (IFRS) effective as of 1 January 2017 are presented in the following table.

Description	PAR	IFRS
Functional currency	Functional currency concept does not underlie the preparation of the financial statements	Functional currency concept underlies the preparation of the financial statements.
Property Plant and Equipment	Components of property, plant and equipment are neither specifically mentioned nor defined. Consequently, overhauls give rise to a provision accounted for on a cumulative basis.	Component accounting is required. Moreover, accounting for overhauls follows component accounting and does not result in recognition of provisions.
Fixed assets	Fixed assets may be revalued only on the basis of separate regulations to a value not exceeding the fair value.	Fixed assets may be revalued to their fair value.
Non-current assets or disposal groups held for sale	There is a lack of requirements concerning the valuation of assets and disposal groups held for sale. Depreciation is required for assets and disposal groups held for sale. Separate presentation and specific disclosures are not required.	Measurement at the lower of carrying amount and fair value less costs to sell. Non-current assets or disposal groups that are classified as held for sale are not depreciated. Presentation in separate line of the statement of financial position.
Inventory	Companies may choose the LIFO formula for the determination of the value of sold inventory.	The use of LIFO formula is explicitly not permitted.
Capitalisation of borrowing costs	All borrowing costs, arising on financing of tangible and intangible assets, incurred in the period of construction, are capitalised as part of the assets' costs. FX gains/losses on capex invoices are capitalised. A choice is given to capitalise borrowing costs into inventory which takes considerable time to complete.	Capitalisation of borrowing costs required on specific and general borrowings to finance the construction of individual qualifying assets. FX gains/losses are also included as part of the borrowing costs, to the extent they represent an adjustment to the interest charge.

Description	PAR	IFRS
Investment properties	Assets held under an operating lease cannot be classified as investment property. No specific measurement formulas are mentioned/allowed.	Assets held under an operating lease can be classified as investment property and accounted for as a finance lease. The fair value model must be applied in such cases. LIFO formula is not allowed.
Intangible assets	Revaluation to fair value is not permitted. All intangible assets are amortised.	Revaluation to fair value is permitted only if there is an active market in which it is possible to reliably determine fair value. Intangible assets are split into those with a finite life - amortised - and those with an indefinite life - not amortised and subject to an annual impairment test.
Impairment of assets	Assessed annually if there are indicators that the assets (including goodwill and intangibles) may be impaired. Assets write down to selling value or, if that is not available, to fair value.	Assessed annually if there are indicators that assets may be impaired (including goodwill and intangibles). If indications exist, write assets down to the higher of fair value less costs to sell and value in use. Even if there are no indicators, goodwill, indefinite life intangible assets and intangible assets not yet in use are subject to an annual test.
Hyperinflation	No adjustments for hyperinflation are required.	During the period of hyperinflation, assets and liabilities are restated to reflect the changes in the general price index.
Business Combinations	Accounted for as an acquisition in transactions that are not legal mergers under common control. Legal mergers among entities under common control might be accounted for using the 'pooling of interests' method. Transaction costs increase the consideration paid for business combination. Any result on decrease or increase of minority interests is recognised as finance income or costs.	Accounted for as an acquisition in all cases. Combinations and legal mergers among entities under common control require developing accounting policy in accordance with IAS 8. Transaction costs are recognised in profit or loss. Decrease or increase in non-controlling interests is accounted for within equity with no impact on profit or loss.

Description	PAR	IFRS
<p>Goodwill and adjustments to fair value on acquisition of subsidiary</p>	<p>Goodwill on acquisition is the difference between the purchase price and the fair value of all assets and liabilities acquired. Changes in the initial fair values of acquired assets and liabilities which are identified during the financial year in which the acquisition took place should adjust goodwill.</p> <p>Goodwill is amortised over the economic useful life or, if the economic useful life is not reliably determinable, then over a period not exceeding 5 years.</p> <p>Negative goodwill:</p> <ul style="list-style-type: none"> ▸ Relating to future losses acquired as deferred and amortised over the period of the loss ▸ Otherwise, up to the value of the depreciable assets is deferred and amortised over the depreciable life ▸ Balance is recognised as income ▸ Not allowed in regard to measurement of intangibles. 	<p>Goodwill on acquisition is the excess of (a) over (b) below:</p> <p>(a) the aggregate of:</p> <p>(i) the consideration transferred, which generally requires acquisition-date fair value;</p> <p>(ii) the amount of any non-controlling interest in the acquiree; and</p> <p>(iii) in a business combination achieved in stages, the acquisition date fair value of the acquirer's previously held equity interests in the acquiree</p> <p>(b) the net of the acquisition-date amounts of the identifiable assets acquired and the liabilities assumed.</p> <p>Changes in the initial fair values of acquired assets and liabilities if only provisionally assessed at the date of acquisition, which are identified within 12 months of the acquisition, are adjusted against goodwill. Goodwill is not amortised, but subject to a yearly impairment test. Gain on bargain purchase is recognised as income.</p>
<p>Investments in subsidiaries, associates and joint ventures in separate standalone accounts of the parent</p>	<p>Choice of policy between:</p> <ul style="list-style-type: none"> ▸ Cost ▸ Equity accounting ▸ Fair value with all changes recognized directly in equity 	<p>Choice of policy between:</p> <ul style="list-style-type: none"> ▸ Cost ▸ Equity accounting ▸ Fair value with all changes recognised directly in other comprehensive income

Description	PAR	IFRS
Financial instruments	<p>The following categories of financial instruments are available:</p> <ul style="list-style-type: none"> ▶ Loans and receivables restricted to those arising from providing funds to another entity ▶ Available for sale financial assets are measured at fair value with a choice of policy to recognise changes in the income statement or equity. Any impairment recognised in the income statement may be reversed in the income statement at a later date ▶ Held for trading instruments are those acquired for the purpose of generating profits from sale in a short period of time ▶ Held for maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturity that an entity has the positive intention and ability to hold to maturity ▶ Other financial liabilities. 	<p>The following categories of financial instruments are available:</p> <ul style="list-style-type: none"> ▶ Loans and receivables include those arising from sale of goods and may include balances acquired in some cases ▶ Available for sale financial assets are valued at fair value with changes recognised in equity. Any impairment below cost is recognised in the income statement and for equity instruments may not be reversed through the income statement ▶ Financial assets or financial liabilities at fair value through profit and loss consist of: <ul style="list-style-type: none"> ▶ Held for trading ▶ Other assets or liabilities designated at inception and meeting specific conditions ▶ Held for maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturity that an entity has the positive intention and ability to hold to maturity ▶ Other financial liabilities.
Hedging	<p>Cash flow hedges include all firm commitments. The balance in equity is included in the carrying value of the acquired asset/liability.</p>	<p>Cash flow hedges include firm commitments only relating to foreign exchange risk - all other commitments are fair value hedges.</p> <p>The balance in equity remains in equity until the underlying transaction effects the income statement.</p> <p>If the firm commitment was for a non-financial asset or liability, there is a choice of policy to adjust the carrying value of the asset/liability or to keep the balance.</p>

Description	PAR	IFRS
Investment tax credits	Investment tax credits used give rise to a deferred tax asset and at the same time are recognised as a government grant to be amortised over the useful life of the asset (per standard issued by Accounting Standards Committee).	Unused investment tax credits give rise to a deferred tax asset and affect the tax charge in the year granted.
Share - based payments	There is a lack of requirements concerning share-based payments accounting. The practice is not to account for equity-settled' transactions and to recognise a provision for cash-settled transactions.	Share-based payments transactions including transactions with employees or other parties to be settled in cash, other assets or equity instruments of the entity are recognised generally giving rise to expenses in the entities financial statements.

In any matters not regulated by the Accounting Law or the Decrees an entity may apply National Accounting Standards issued by the Accounting Standards Committee. In the absence of relevant national regulations, the entity may apply International Financial Reporting Standards.

3.8. Selected Aspects of Accounting for Real Estate under International Financial Reporting Standards

Introduction

Nowadays, a number of real estate entities apply IFRS for their accounting and reporting purposes. Companies reporting under International Financial Reporting Standards (IFRS) continue to face a steady flow of new standards and interpretations. The volume of changes to IFRS is significant and is likely to continue in the foreseeable future. The nature of the changes ranges from significant amendments of fundamental principles to some minor changes included in the annual improvements process. They will affect many different areas of accounting of real estate entities such as the presentation of financial statements, financial instruments, leases. Some of the changes have implications that go beyond matters of accounting, as they may impact business decisions, such as the design of joint arrangements or the structuring of transactions. The challenge for preparers will be to gain an understanding of what lies ahead.

Below we concentrate on the implications of the IFRS 13, 15, 16 and 17 for the real estate



and construction industries, which have recently brought some significant changes.

IFRS 13 Fair value measurements – implications for the real estate sector

IFRS 13 was issued by the International Accounting Standards Board in May 2011 and started to be effective for annual periods beginning on or after 1 January 2013. IFRS 13 describes how to measure fair value under IFRS when it is required or permitted by IFRS. The standard does not change when an entity is required to use fair value, but provides a framework for situations where another standard requires or permits fair value measurements.

IFRS 13 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions (i.e. an exit price) regardless of whether that price is directly observable or estimated using another valuation technique.

The fair value measurement assumes that market participants have sufficient knowledge and awareness of the asset or a liability that would be usual and customary in such a market transaction. The definition emphasizes that the fair value should be based on market measurements, maximizing the use of observable market inputs, such as quoted prices. If the observable market inputs are not available, other valuation techniques should be applied.

IFRS 13 does not prescribe which valuation technique must be used in a particular circumstance. The valuation technique used to measure fair value should be appropriate for the circumstances, and one for which sufficient data is available. Valuation techniques that are typically used include the market approach, the income approach and the cost approach. The market approach uses prices and other relevant information generated by market transactions involving identical or comparable assets. In income approach, the valuation is based on estimated future income and profit or cash flows. The cost approach reflects the amount that currently would be required to replace the service capacity of an asset (often referred to as current replacement cost).

Real estate entities may be affected by IFRS 13 in various aspects of their business when:

- ▶ Measuring property interests at fair value
- ▶ Testing property interests for impairment
- ▶ Determining the fair value of identifiable assets and liabilities as part of the purchase price allocation applied in a business combination
- ▶ Measuring an interest in a real estate joint venture or associate at fair value
- ▶ Compiling and disclosing information on the fair values of property interests, including but not limited to significant assumptions, adjustments to unobservable inputs and qualitative and quantitative sensitivity analysis.

Regardless of whether valuations are performed externally or internally,

management must understand the methodologies and assumptions used in the valuations and determine whether the assumptions are reasonable and consistent with the requirements of IFRS 13.

IFRS 13 requires an entity to maximize the use of relevant observable inputs and minimize the use of unobservable inputs. IFRS 13 also includes a fair value hierarchy based on the inputs used to determine fair value as follows:

- ▶ Level 1 - quoted prices (unadjusted) in active markets for identical assets or liabilities.
- ▶ Level 2 - inputs other than quoted market prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.
- ▶ Level 3 - unobservable inputs (valuation techniques that do not make use of observable inputs).

Many of the IFRS 13 disclosures are required for each class of assets (and liabilities). IFRS 13 requires these classes of assets (and liabilities) be determined based on:

- (a) the nature, characteristics and risks of the asset or liability; and
- (b) the level of the fair value hierarchy within which the fair value measurement is categorized.

The determination of the appropriate class of assets will require significant judgement. At one end of the spectrum, the properties in an operating segment (as defined by IFRS 8 Operating Segments) may be a class of assets for the purpose of the disclosures required by IFRS 13. This

may be the case even if there is a large number of properties in the segment, if the properties have the same risk profile (e.g., the segment comprises residential properties in countries with property markets of similar characteristics). At the other end of the spectrum, IFRS 13 disclosures may be required for individual properties or small groups of properties if the individual properties or groups of properties have different risk profiles (e.g., a real estate entity with two properties - an office building in a developed country and a shopping centre in a developing country).

Upcoming standards: IFRS 9, IFRS 15 and IFRS 16 - brief summary

Financial Instruments (IFRS 9)

The new financial instruments standard introduces changes to the accounting for credit losses, including the related disclosures. The new financial instruments standard also introduces changes to how financial assets are measured on an ongoing basis to align with the asset's cash flow characteristics and the business model in which the asset is held.

The new standard was developed in response to concerns of many investors and other stakeholders, both during and after the global financial crisis, that there needed to be more timely recognition of expected credit losses for loans and other financial instruments. In measuring expected credit losses under the new standard, issuers will be required to use reasonable and supportable information that is available to them without undue cost or effort,

including not only past events and current conditions but also forecasts of future economic conditions.

Revenue from Contracts with Customers (IFRS 15)

The new revenue standard provides clearer and more detailed principles for revenue recognition and disclosure in a framework that is designed to improve comparability of revenue amounts over a range of industries, companies, and geographical boundaries. The standard can significantly change an issuer's timing for its recognition of revenue, among other changes.

Revenue is often not only a key performance measure in its own right but also the starting point for other performance measures, such as operating income, net income, and earnings per share; key analytical ratios such as margins, return on equity, and return on assets; and valuation metrics, such as revenue multiples and price-to-earnings ratios. As a result, the new revenue standard has the potential to change not only an issuer's top line, but also its bottom line and investor analyses that depend on the financial statements.

Leases (IFRS 16)

Companies will need to change certain lease accounting practices when implementing IFRS 16 Leases, the new leases standard issued by the International Accounting Standards Board (IASB). IFRS 16 significantly changes the accounting for leases by lessees and could have far-reaching implications for E&C entities' finances and operations. For example, IFRS 16 may require some entities to recognize assets and liabilities for leases of construction

equipment and office space they currently account for as operating leases.

Lessor accounting is substantially unchanged from current accounting. As with IAS 17 Leases, IFRS 16 requires lessors to classify their leases into two types: finance and operating leases. Lease classification determines how and when a lessor recognizes lease revenue and what assets a lessor records. The profit or loss recognition pattern for lessors is not expected to change. This will be a relief for many entities, because, based on the IASB's discussions during the project deliberations, lessors were concerned about the extent of the changes in lessor accounting.

IFRS 16 requires lessees to recognize most leases on their balance sheets as lease liabilities with corresponding right-of-use assets. Lessees apply a single model for most leases. Generally, the profit or loss recognition pattern will change as interest and depreciation expense is recognized separately in the statement of profit or loss (similar to today's finance lease accounting). However, lessees can make accounting policy elections to apply accounting similar to IAS 17's operating lease accounting to 'short-term' leases and leases of 'low-value' assets.

IFRS 16 is effective for annual periods beginning on or after 1 January 2019. Early application is permitted provided that the new revenue standard, IFRS 15 Revenue from Contracts with Customers, has been or is applied at the same date as IFRS 16. Lessees must apply IFRS 16 using either a full retrospective or a modified retrospective approach.

3.9. Exemptions and simplifications applicable for small and micro entities

Definitions

In 2015, a new definition of a small enterprise was introduced to the Accounting Act in addition to the definition of a micro enterprise. Micro and small enterprises are legal entities and the branches of foreign companies (except for organisational units operating in accordance with the Banking Law Act and the regulations on trading in securities, on investment funds, on insurance and reinsurance activities, on credit unions, on the organisation and operation of pension funds or on public benefit organisations) which, in the preceding and current financial years, did not exceed at least two of the following thresholds, provided that respective resolution has been taken by the entity's body responsible for approving the financial statements:

	Micro	Small
total assets	PLN 1.5 million	PLN 17 million
total revenues	PLN 3 million	PLN 34 million
annual average employment level (individuals in full time equivalent)	10	50

Moreover, trade unions, employers' organisations, chambers of commerce, and representative offices of foreign companies are considered micro entities on a condition they do not conduct business activities.

If the statutory audit requirement is a consequence of company's size rather than other factors then it should be noted that some of small entities or entities that enjoy exemptions in measurement of assets and liabilities as described below might be subject to statutory audit as thresholds to qualify for such simplifications and exemptions are higher than these for the statutory audit requirement.

Micro entities are prohibited from measuring assets and liabilities at fair value and at amortised cost.

Irrespective from the decision of whether the company is a small, or a micro, entity and applies the respective simplified financial statements template, the companies that, in the preceding financial years, did not exceed at least two of the above-mentioned thresholds, may apply the following exemptions.

However, if such an entity did not take a respective resolution to apply the financial statements templates applicable to small and micro entities, it should apply the normal financial statements templates.

Financial instruments

Companies that satisfy those criteria may elect to measure the financial instruments in a simplified way as follows:

- ▶ Short-term investments - at the lower of cost or market value, at fair value or

at amortised cost (if a maturity date is known) with gains/losses recognised in the profit and loss account

- ▶ Long-term investments - at acquisition cost less impairment or at fair value with gains/losses recognised in the revaluation reserve in equity or in the profit and loss account (if the current valuation is lower than original). If a maturity date is known, long term investments might be stated at amortised cost.

Deferred tax

Those companies may elect not to recognise deferred tax.

Leases

Those companies are allowed to apply tax regulations in order to recognise and classify leases.

Financial statements

Small and micro entities prepare simplified financial statements in accordance to the relevant template provided as an attachment to the Accounting Act.

Revenues and profits

Micro entities are required to increase respectively the revenues or expenses in the subsequent financial year after the approval of financial statements, by the difference between the revenues and expenses determined in the current financial year's income statement.

A positive difference may be accounted for as an equity increase.

Cash-flow statement and statement of changes in equity

Micro and small enterprises are exempted from preparation statement of changes in equity and cash flow statement.

Directors' report

Small entities are required to prepare a simplified Directors' report, or at least disclose the minimum additional information required by the Accounting Act.

Micro entities are not required to prepare a Directors' report if they present supplementary information to the balance sheet, as required by the Accounting Act.





Contact

REAL ESTATE GROUP



Anna Kicińska



Anna.Kicinska@pl.ey.com



+48 22 557 75 42

Anna Kicińska is a Partner and Leader for CSE Region of the EY Real Estate Advisory Group responsible for real estate Transaction Support, Strategic Advisory and Real Estate M&A. She has over nineteen years of real estate experience in valuation, transaction support, market analysis, and corporate real estate management. She is a certified Polish appraiser and a member of The Royal Institution of Chartered Surveyors (MRICS) and Certified Commercial Investment Member (CCIM).



Anna Andrzejewska



Anna.Andrzejewska@pl.ey.com



+48 22 557 75 43

Anna Andrzejewska is a Senior Manager in the Real Estate Advisory Group. She specializes in strategic advisory consultancy in the real estate sector, especially in the preparation and implementation of the strategy of corporate portfolio development and management as well as in investment process management. She graduated from the University of Łódź with Master's degree in Finance and Banking and specialization in Investments and Real Estate. She completed a post-graduate School of Real Estate Valuation at Warsaw School of Technology. She is a certified property manager.



Paweł Nowakowski

 Pawel.Nowakowski@pl.ey.com

 +48 22 557 66 16

Paweł Nowakowski is a Senior Manager in the Real Estate Advisory Group. Graduate of the Warsaw School of Economics, Paweł obtained a Master degree in economics (specialization: enterprise management and Real Estate). Paweł gained market experience working for several global real estate companies and strategic consultancy firm. He has conducted numerous valuations for internal, investment and loan security purposes, embracing both single asset as well as portfolio of office, retail warehouse and hotel properties. He is certified Polish appraiser and a member of The Royal Institution of Chartered Surveyors (MRICS).



Dominik Wojdat

 Dominik.Wojdat@pl.ey.com

 +48 22 557 6645

Dominik Wojdat is a Manager in the Real Estate Advisory Group. He has broad experience in providing both developers and investors with market, highest & best use and feasibility studies for commercial as well as residential properties. Dominik also conducted valuations for accounting, investment and loan security purposes. He graduated from Faculty of Geography and Regional Studies at University of Warsaw. He completed a post-graduate property management studies at Warsaw School of Technology and became a certified property manager. Dominik is Certified Commercial Investment Member (CCIM).



Katarzyna Lubaś

 Katarzyna.Lubas@pl.ey.com

 +48 22 557 67 06

Katarzyna Lubaś is a Marketing and Business Development Coordinator in the Real Estate Advisory Group. She is responsible for PR and new business development activities, market research and investor relations.

ASSURANCE SERVICES



Łukasz Jarzynka

 Łukasz.Jarzynka@pl.ey.com

 +48 22 557 84 29

Łukasz is an Executive Director in Warsaw Office and EY Real Estate Group Audit Leader in Poland and CSE Region. Łukasz has over 11 years of experience in audit and is Polish Chartered Accountant. He gained comprehensive experience in auditing both large and multinational groups, as well as smaller private clients, IPO/SPO transactions and audit of listed companies, with focus on the real estate market. Łukasz is co-author of "The real state of real estate" book - The Real Estate Guide published by EY.



Mariusz Kędzierski

 Mariusz.Kedzierski@pl.ey.com

 +48 22 557 62 42

Mariusz is an experienced Manager in Assurance Department and member of the Real Estate Group at EY's Warsaw office. Mariusz has over 8 years of experience in audit and is at final stage of gaining Polish Chartered Accountant qualifications (10/10 exams passed, during last application phase). Mariusz specializes in audits of clients from real estate market (real estate groups / funds, listed residential and real estate developers). Mariusz has also experience in IPO audits of real estate groups.



Hubert Rogoziński

 Hubert.Rogozinski@pl.ey.com

 +48 22 577 84 71

Hubert is a Manager within EY Assurance and Advisory Business Services practice. He has a Master Degree in Finance and Banking Warsaw School of Economics, Poland; Member of Association of Chartered Certified Accountants; In the final stage of qualifications for Polish Certified Auditor; Member of EY Poland Real Estate Group. Hubert gained experience durign audits and reviews of capital groups reporting under US GAAP, International Financial Reporting Standards and Polish Accounting Standards, including publicly listed companies.

ACCOUNTING ADVISORY AND TECHNICAL DESK SERVICES



Anna Sirocka

 Anna.Sirocka@pl.ey.com


 +48 22 557 79 36

Anna leads Financial Accounting Advisory Services in Poland. She has 22 years of professional experience as an auditor and accounting expert. She is Polish Chartered Accountant, Certified Internal Auditor, member of ACCA and member of Accounting Standards Committee in Poland (appointed by the Minister of Finance). She is involved as IFRS subject matter expert during audits of multinational groups, listed companies as well as smaller private clients operating on real estate market. She participated in numerous IPOs, mergers and acquisitions with accounting advisory services.



Robert Stojek

 Robert.Stojek@pl.ey.com


 +48 22 557 71 58

Robert is a Senior Manager in Technical Desk at EY's Warsaw office. Robert holds professional ACCA certificate since 2007. He accumulated more than 25 years of comprehensive working experience including high- and middle-management positions in finance and accounting departments of international companies. For several years he led and provided input to the European IFRS endorsement processes in particular related to leases, revenue recognition and financial instruments. In EY he provides technical advice on application of the accounting act and IFRSs and IFRS technical review of financial statements.

TAX SERVICES



Tomasz Oździński

 Tomasz.Ozdziński@pl.ey.com

 +48 22 557 69 22

Tomasz Oździński is the head of the Tax Real Estate Group of EY in Poland and a member of EY's Transaction Tax (M&A) Team. He is a graduate of the Faculty of Law and Administration of the University of Adam Mickiewicz in Poznań and an Executive Programme in Real Estate at the Solvay Brussels School of Economics & Management at Université Libre de Bruxelles. Tomasz is a certified tax advisor and has two decades of experience in managing large, complex projects, including in particular transaction services and tax optimizations, undertaken both locally and internationally.



Sebastian Ickiewicz

 Sebastian.Ickiewicz@pl.ey.com

 +48 22 557 75 24

Sebastian is an Executive Director in International Taxation Group and Tax Real Estate Group at EY's Wrocław office. He is a chartered tax advisor and has 14 years of experience in tax advisory. Sebastian's managed and supervised numerous tax buy-side or vendor due diligence projects, tax structuring projects and post-closing reorganisations and optimisations (mergers, demergers, disposals of assets, etc.). He was involved in the biggest transactional projects on the Polish market for corporate clients and investment funds, especially in the real estate and telecommunications sector.



Anna Pleskowicz


 Anna.Pleskowicz@pl.ey.com

 +48 22 557 79 04

Anna Pleskowicz is a Senior Manager in International Tax Services Group and Tax Real Estate Group at EY's Warsaw office. She has been with EY since 2004. She is a certified tax advisor. Her skills include advising on global restructurings, international tax structuring and planning (corporate issues, financing etc.), providing tax advisory services on domestic tax law. In 2008 Anna worked as Polish Tax Desk in New York. Anna is a co-author of the book "Taxation of the Real Estate Market" and co-author of the book „International tax planning”, an author of various press articles relating to tax issues.



Michał Sawicki

 Michal.Sawicki@pl.ey.com

 +48 22 557 70 26

Michał Sawicki is a Senior Manager in Tax Real Estate Group at EY's Warsaw office. He has been with EY since 2007. He is a certified tax advisor. His skills include advising on global restructurings, transaction support and structuring, tax accounting. He was involved in projects concerning tax issues in relation to the process of setting up, operating and restructuring of companies, tax assistance in establishing tax effective exit scenarios, international tax structuring. Michał is an author of various articles relating to tax aspects of investing on the real estate market and co-author of the book "Taxation of the Real Estate Market".



Daniel Banach

 Daniel.Banach@pl.ey.com

 +48 22 557 78 15

Daniel is a Transaction Tax Manager and member of Tax Real Estate Group at EY's Warsaw office. He is a chartered tax advisor and ACCA member with nearly 8-year experience in tax advisory. His professional experience includes both buy-side and sell-side advisory for corporates and private equity. He advised during leveraged real estate acquisitions, divestments and multinational tax structuring projects. Daniel also advised on tax efficient exit strategies for real estate companies as well as debt-push down structures. He has also considerable experience in refinancing and debt restructuring projects conducted in an international environment. Daniel was a lecturer and tutor on many tax conferences and meetings. He is also an author and co-author of numerous professional publications in press.



Michał Koper

 Michał.Koper@pl.ey.com

 +48 22 557 70 24

Michał Koper is a Senior Manager within International Tax Services Division and Real Estate Group of EY in Warsaw. He has been with EY since 2006. From 2013 to 2015 he held a position at Ernst & Young LLP's International Tax Services group based in New York where he led the Polish tax desk. He is a certified Polish tax advisor. His professional skills include advising on tax planning for international investments in Poland, tax effective ownership structures and financing schemes, global restructurings, providing tax advisory services on domestic tax law. He was involved in projects concerning tax aspects of setting up, operating and restructuring of companies, tax assistance in establishing tax effective exit scenarios. Michał is a co-author of the book "Taxation of the Real Estate Market" and author of various articles relating to tax issues.



Mikołaj Bokowy



Mikolaj.Bokowy@pl.ey.com



+48 22 557 74 39

Mikołaj is a Transaction Tax Manager and member of Tax Real Estate Group at EY's Warsaw office. He is a chartered tax advisor and a legal counsel with over 7-year experience in tax advisory. His professional experience includes: numerous structuring and tax due diligence projects, day-to-day tax advisory, assistance in re-financing schemes, implementation of the step-up structures and restructurings of businesses (such as mergers, spin-offs, etc.). He assisted in many investment / dis-investment projects for real estate clients and investment funds.

LEGAL SERVICES



Zuzanna Zakrzewska



Zuzanna.Zakrzewska@pl.ey.com



+48 22 557 78 16

Zuzanna is an advocate with fifteen years of experience in legal advisory for domestic and international entities from different sectors. She has extensive experience in providing legal support and day to day legal advises to companies particularly from the real estate, financial services and energy sector. Zuzanna specializes in providing legal assistance related to the corporate law including restructuring processes and M&A transactions. She has advised in a numerous transactions involving the acquisition of companies and assets related to real estate both on the buyers and sellers side. Zuzanna also advised clients during processes of examination of legal status of the real estate as well as during negotiating of the lease agreements.



Barbara Chochołowska

 Barbara.Chocholowska@pl.ey.com

 +48 22 557 75 92

Barbara Chochołowska is a legal counsel with eleven years of experience in working for domestic and international entities from different sectors. During years of practice Barbara has worked on a variety of complex corporate and real estate - related deals involving multi-jurisdictional and international matters.

The range of her expertise covers conducting legal due diligence and providing legal advice in connection with M&A transactions and restructuring projects. She has strong experience in providing legal support related to the real estate matters including the real estate due diligence and the transactions of the real estate acquisitions (i.e. both the asset and the share deal transactions). She also supports clients in drafting and negotiating the lease agreements and the management contracts of commercial and industrial spaces.



Piotr Woźniak

 Piotr.Wozniak@pl.ey.com

 +48 71 375 10 22

Piotr Woźniak is a legal counsel with six years of experience in real estate and property development legal aspects. A graduate of the Faculty of Law at the University of Wrocław. Piotr also completed postgraduate studies on commercial companies legal regulations at University of Wrocław and postgraduate studies on legal aspects of construction process at the Warsaw School of Economics. Before joining EY Piotr was working in real estate departments in two high quality law firms in Warsaw. Piotr specializes in real estate trading law, spatial planning and land development law and construction law. Piotr advises clients on matter relating to property purchase, location of developments and contracting with architects and construction companies. He is responsible for comprehensive advice on preparation stage of development projects and day to day problems connected with development process. He has strong experience in providing legal support related to commercialization of shopping centers and office space lease. Piotr has also advised in infrastructure projects i.e. wind farms, shell gas platforms and gas transmission networks.



Katarzyna Kłaczyńska

 Katarzyna.Klaczynska@pl.ey.com


 +48 22 557 79 61

Katarzyna Kłaczyńska, LL.M., is an attorney specializing in energy and environmental matters. She has advised on a number of high-profile regulatory projects, including acting as a leading counsel for power sector companies and the Polish government regarding climate change regulations and developing advocacy strategy concerning revision of the current Environmental Impact Assessment model on behalf of the Business Association of Polish Power Plants. She has worked on a number of environmental and regulatory due diligence projects for the variety of sectors. She is also experienced in environmental aspects of shale gas investments.

Katarzyna is a member of the New York Bar. She graduated from Jagiellonian University in Poland, and Harvard Law School, where she was granted Gammon Fellowship for Academic Excellence.



Magdalena Kasiarz-Lewandowska

 Magdalena.Kasiarz-Lewandowska@pl.ey.com

 +48 22 557 62 07

Magdalena Kasiarz-Lewandowska is an advocate and a Senior Associate in EY Law with ten years of experience in advising on the sale, reorganization and liquidation of companies with international capital (conducting M&A transactions and legal audits), advising on the restructuring of capital groups, including mergers, divisions and transformations of companies, as well as cross-border mergers. She advised in numerous transactions on shares and assets related to real estate both on the buyers and sellers side. She also specializes in providing the ongoing legal assistance in the scope of civil law and company law, including preparation and negotiation of lease and service agreements.



Joanna Toruniewska



Joanna.Toruniewska@pl.ey.com



+48 12 424 32 64

Joanna Toruniewska is a legal counsel with more than five years of experience in advising for domestic and international entities from different sectors. The range of her expertise covers conducting legal due diligence and providing legal advice in connection with M&A transactions and restructuring projects. She assisted the entrepreneurs in the real estate transactions, including due diligence before the real estate acquisitions, preparing and negotiating different types of real estate agreements (i.e. sale and purchase agreements, lease agreements) as well as advising on investment financing. She also represented the clients before the courts during the cases regarding the real estate issues.





Appendix

Withholding tax rates under Poland's double tax treaties (payments from Poland)¹

	Dividends (%)	Interest (%)	Royalties (%)
Albania	5/10 (d)	10	5
Algeria (gg)	5/15 (d)	0/10 (k)	10
Armenia	10	5	10
Australia	15	10	10
Austria	5/15 (a)	0/5 (k)	5
Azerbaijan	10	10	10
Bangladesh	10/15 (a)	0/10 (k)	10
Belarus	10/15 (e)	10	0
Belgium	5/15 (cc)	0/5 (k)	5
Bosnia & Herzegovina	5/15 (y)	10	10
Bulgaria	10	0/10 (k)	5
Canada	5/15 (a)	0/10 (pp)	5/10 (qq)
Chile	5/15 (c)	15 (dd)	5/15 (h)(ee)
China	10	0/10 (k)	7/10 (h)
Croatia	5/15 (d)	0/10 (k)	10
Cyprus	0/5 (oo)	0/50 (k)	5
Czech Republic	5	0/5 (k)	10
Denmark	0/5/15 (s)	0/5 (k)	5
Egypt	12	0/12 (k)	12
Ethiopia (gg)	10	10	10
Estonia	5/15 (d)	0/10 (k)	10
Finland	5/15 (y)	0/5 (k)	5
France	5/15 (a)	0	0/10 (p)

¹ Generally effective 1 January 2017.

	Dividends (%)	Interest (%)	Royalties (%)
Georgia	10	0/8 (k)	8
Germany	5/15 (jj)	0/5 (k)	5
Greece	19	10	10
Hungary	10	0/10 (k)	10
Iceland	5/15 (y)	0/10 (k)	10
India	15	0/15 (k)	20 (bb)
Indonesia	10/15 (c)	0/10 (k)	15
Iran	7	0/10 (k)	10
Ireland	0/15 (kk)	0/10 (k)	0/10 (v)
Israel	5/10 (b)	5	5/10 (h)
Italy	10	0/10 (k)	10
Japan	10	0/10 (k)	0/10 (i)
Jordan	10	0/10 (k)	10
Kazakhstan	10/15 (c)	0/10 (k)	10
Korea (South)	5/10 (a)	0/10 (k)	5
Kuwait	0/5 (z)	0/5 (k)	15
Kyrgyzstan	10	0/10 (k)	10
Latvia	5/15 (d)	0/10 (k)	10
Lebanon	5	0/5(k)	5
Lithuania	5/15 (d)	0/10 (k)	10
Luxembourg (ii)	0/15 (oo)	0/5 (k)	5
Macedonia	5/15 (d)	0/10 (k)	10
Malaysia	0	15	15
Malta	0/10 (hh)	0/5 (k)	5
Mexico	5/15 (d)	0/10/15 (k)(aa)	10
Moldova	5/15 (d)	0/10 (k)	10
Mongolia	10	0/10 (k)	5
Morocco	7/15 (d)	10	10
Netherlands	5/15 (a)	0/5 (k)	5
New Zealand	15	10	10
Nigeria (gg)	10	0/10 (k)	10
Norway	0/15 (hh)	0/5 (k)	5
Pakistan	15 (j)	0/20 (k)	15/20 (n)

	Dividends (%)	Interest (%)	Royalties (%)
Philippines	10/15 (d)	0/10 (k)	15
Portugal	10/15 (o)	0/10 (k)	10
Qatar	5	0/5 (k)	5
Romania	5/15 (d)	0/10 (k)	10
Russian Federation	10	0/10 (k)	10 (w)
Saudi Arabia	5	0/5 (k)	10
Singapore	0/5/10 (oo) (tt)	0/5/10 (k)	2/5 (h)
Slovak Republic	5/10 (c)	0/10 (k)	5
Slovenia	5/15 (d)	0/10 (k)	10
South Africa	5/15 (d)	0/10 (k)	10
Spain	5/15 (d)	0	0/10 (f)
Sri Lanka	15	0/10 (k)	0/10 (l)
Sweden	5/15 (d)	0	5
Switzerland	0/15 (ll)	0/5/10 (mm)	0/5/10 (nn)
Syria	10	0/10 (k)	18
Tajikistan	5/15 (d)	10	10
Thailand	19 (t)	0/10/20 (k)(m)	5/15 (f)
Taiwan	10	0/10 (k)	3/10 (h)
Tunisia	5/10 (d)	12	12
Turkey	10/15 (d)	0/10 (k)	10
Ukraine	5/15 (d)	0/10 (k)	10
United Arab Emirates	0/5 (z)	0/5 (k)	5
United Kingdom	0/10 (ff)	0/5 (k)	5
United States	5/15 (g)	0	10
Uruguay (gg)	15	0/15 (k)	15
Uzbekistan	5/15 (c)	0/10 (k)	10
Vietnam	10/15 (d)	10	10/15 (q)
Yugoslavia (u)	5/15 (y)	10	10
Zambia (gg)	10/15 (d)	10	10
Zimbabwe	10/15 (d)	10	10
Nontreaty countries	19	20	20 (x)

- (a) The lower rate applies if the recipient of the dividends is a company that owns at least 10% of the payer.
- (b) The lower rate applies if the recipient of the dividends is a company that owns at least 15% of the payer.
- (c) The lower rate applies if the recipient of the dividends is a company that owns at least 20% of the payer.
- (d) The lower rate applies if the recipient of the dividends is a company that owns at least 25% of the payer.
- (e) The lower rate applies if the recipient of the dividends is a company that owns more than 30% of the payer.
- (f) The lower rate applies to royalties paid for copyrights, among other items; the higher rate applies to royalties for patents, trademarks and industrial, commercial or scientific equipment or information.
- (g) The lower rate applies if the recipient of the dividends is a company that owns at least 10% of the voting shares of the payer.
- (h) The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.
- (i) The lower rate applies to cultural royalties.
- (j) This rate applies if the recipient of the dividends is a company that owns at least one-third of the payer.
- (k) The 0% rate applies to among other items, interest paid to government units, local authorities and central banks. In the case of certain countries, the rate also applies to banks (the list of exempt or preferred recipients varies by country). The relevant treaty should be consulted in all cases.
- (l) The 0% rate applies to royalties paid for, among other items, copyrights. The 10% rate applies to royalties paid for patents, trademarks and for industrial, commercial or scientific equipment or information.
- (m) The 20% rate applies if the recipient of the interest is not a financial or insurance institution or government unit.
- (n) The lower rate applies to know-how; the higher rate applies to copyrights, patents and trademarks.
- (o) The 10% rate applies if, on the date of the payment of dividends, the recipient of the dividends has owned at least 25% of the share capital of the payer for an uninterrupted period of at least two years. The 15% rate applies to other dividends.
- (p) The lower rate applies to royalties paid for the copyright, the use of or the right to use industrial, commercial and scientific equipment, services comprising scientific or technical studies, research and advisory, supervisory or management services. The treaty should be checked in all cases.
- (q) The lower rate applies to know-how, patents and trademarks.
- (r) The lower rate applies to certain dividends paid to government units or companies.
- (s) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the capital of the payer of the dividends for at least one year and if the dividends are declared within such holding period. The 5% rate applies to dividends paid to pension funds or other similar institutions operating in the field of pension systems. The 15% rate applies to other dividends.

- (t) Because the rate under the domestic law of Poland is 19%, the treaty rate of 20% does not apply.
- (u) The treaty with the former Federal Republic of Yugoslavia that applied to the Union of Serbia and Montenegro should apply to the Republics of Montenegro and Serbia.
- (v) The lower rate applies to fees for technical services.
- (w) The 10% rate also applies to fees for technical services.
- (x) The 20% rate also applies to certain services (for example advisory, accounting, market research, legal assistance, advertising, management and control, data processing, search and selection services, guarantees and pledges and similar services).
- (y) The lower rate applies if the beneficial owner is a company (other than a partnership) that controls directly at least 25% of the capital of the company paying the dividends.
- (z) The lower rate applies if the owner of the dividends is the government or a government institution.
- (aa) The 10% rate applies to interest paid to banks and insurance companies and to interest on bonds that are regularly and substantially traded.
- (bb) Because the rate under the domestic law in Poland is 20%, the treaty rate of 22.5% does not apply.
- (cc) The lower rate applies if the recipient of the dividends is a company that owns either of the following:
 - ▶ at least 25% of the payer
 - ▶ at least 10% of the payer, provided the value of the investment amounts to at least €500,000 or its equivalent
- (dd) The treaty rate is 15% for all types of interest. However, under a most-favored-nation clause in a protocol to the treaty, the 15% rate is replaced by any more beneficial rate agreed to by Chile in a treaty entered into with another jurisdiction. For example, under Chile's tax treaty with Spain, a 5% rate applies to certain types of interest payments, including interest paid to banks or insurance companies or interest derived from bonds or securities that are regularly and substantially traded on a recognized securities market.
- (ee) The general treaty rate for royalties is 15%. However, under a most-favored-nation clause in a protocol to the treaty, the 15% rate is replaced by any more beneficial rate agreed to by Chile in a treaty entered into with another jurisdiction. For example, under Chile's tax treaty with Spain, the general withholding tax rate for royalties is 10%.
- (ff) The 0% rate applies if the beneficial owner of the dividends is a company that holds at least 10% of the share capital of the payer of the dividends for an uninterrupted period of at least two years.
- (gg) The treaty has not yet entered into force.
- (hh) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 10% of the capital of the company paying the dividends on the date on which the dividends are paid and has held the capital or will hold the capital for an uninterrupted 24-month period that includes the date of payment of the dividends.
- (ii) The withholding tax rates listed in the table are effective from 1 September 2013.
- (jj) The lower rate applies if the recipient of the dividends is a company (other than a partnership) that owns directly at least 10% of the payer. Certain limitations to the application of the preferential rates may apply.
- (kk) The lower rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the voting power of the payer. Under the Ireland treaty, if Ireland levies tax at source on dividends, the 0% rate is replaced by a rate of 5%.

- (ll) The 0% rate applies to dividends paid to a company (other than a partnership) that holds directly at least 10% of the capital of the company paying the dividends on the date the dividends are paid and has done so or will have done so for an uninterrupted 24-months. The 0% rate may also apply to dividends paid to certain pensions funds.
- (mm) The 10% rate applies to interest paid before 1 July 2013. For interest paid on or after 1 July 2013, the 5% rate applies unless an exemption applies. The 0% rate applies to such interest if any of the following conditions is satisfied:
- ▶ the beneficial owner of the interest is a company (other than a partnership) that holds directly at least 25% share capital of the payer of the interest.
 - ▶ the payer of the interest holds directly at least 25% of the share capital of the beneficial owner of the interest.
 - ▶ an EU/EEA company holds directly at least 25% of the share capital of both the beneficial owner of the interest and the payer of the interest.
- (nn) For royalties paid before 1 July 2013, the 10% rate applies if Switzerland imposes in its local provisions a withholding tax on royalties paid to nonresidents. Otherwise, a 0% applies. For royalties paid on or after 1 July 2013, a 5% rate applies unless an exemption applies. The 0% rate applies to such royalties if any of the following conditions is satisfied:
- ▶ the beneficial owner of the royalties is a company (other than a partnership) that holds directly at least 25% of the share capital of the payer of the royalties.
 - ▶ the payer of the royalties holds directly at least 25% of the share capital of the beneficial owner of the royalties.
 - ▶ an EU/EEA company holds directly at least 25% of the share capital of both the beneficial owner of the royalties and the payer of the royalties.
- Furthermore, if Poland enters into an agreement with an EU or EEA country that allows it to apply a rate that is lower than 5%, such lower rate will also apply to royalties paid between Poland and Switzerland.
- (oo) The lower rate applies if the beneficial owner is a company (other than a partnership) that holds directly at least 10% of the capital of the company paying the dividends for an uninterrupted period of 24 months.
- (pp) The 0% rate applies to:
- ▶ interest arising in Poland and paid to a resident of Canada with respect of a loan made, guaranteed or insured by Export Development Canada, or a credit extended, guaranteed or insured by Export Development Canada,
 - ▶ interest arising in Canada and paid to a resident of Poland with respect of a loan made, guaranteed or insured by an export financing organization that is wholly owned by the State of Poland, or a credit extended, guaranteed or insured by an export financing organization that is wholly owned by the State of Poland,
 - ▶ interest arising in Poland or Canada and paid to a resident of the other Contracting State in respect of indebtedness arising as a result of the sale by a resident of the other Contracting State of any equipment, merchandise or services (unless the sale of indebtedness is between related parties or where the beneficial owner of the interest is a person other than the vendor or a person related to the vendor).
- (qq) The lower rate applies to copyright royalties and similar payments with respect of the production or reproduction of literary, dramatic, musical or artistic work and royalties for the use of, or

the right to use, any patent or for information concerning industrial, commercial or scientific experience (with some exceptions).

- (rr) The agreement with the Socialist Federal Republic of Yugoslavia should apply to Bosnia-Herzegovina.
- (ss) The 5% rate applies if the recipient is a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends.
- (tt) The 0% rate applies to dividends paid to Government of Singapore or Government of Poland, which includes:
 - ▶ Monetary Authority of Singapore,
 - ▶ the Government of Singapore Investment Corporation Pte Ltd,
 - ▶ National Bank of Poland,
 - ▶ Bank Gospodarstwa Krajowego,
 - ▶ a statutory body,
 - ▶ any institution wholly or mainly owned by the Government of Singapore or by the Government of Poland as may be agreed from time to time between the competent authorities of Contracting States.

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization and/or one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

EY, Rondo ONZ 1, 00-124 Warsaw

© 2017 EYGM Limited.
All Rights Reserved.

SCORE No. 00049-162

ey.com/pl

Real Estate Consulting & Transaction Services

Anna Kicińska
e-mail: Anna.Kicinska@pl.ey.com
Phone +48 22 557 7542

Tax Services

Tomasz Oździński
e-mail: Tomasz.Ozdziński@pl.ey.com
Phone +48 22 557 6922

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither EYGM Limited nor any other member of the global EY organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

Assurance Services

Łukasz Jarzynka
e-mail: Lukasz.Jarzynka@pl.ey.com
Phone +48 22 557 84 29

Legal Services

Zuzanna Zakrzewska
e-mail: Zuzanna.Zakrzewska@pl.ey.com
Phone +48 22 557 7816