



Gide Loyrette Nouel

Real Property Investment Law in Poland



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Contents

TITLE 3

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION 5

THE DEVELOPMENT OF LAND 6

LEASES 7

COMMERCIAL LEASES 9

TAX 11

LEGAL COSTS REGARDING REAL ESTATE ACQUISITIONS 14

SECURITY USED IN REAL PROPERTY FINANCINGS..... 15

TITLE**Full ownership***General*

Full ownership is recognized under Polish law. In Poland full ownership is the legal title which gives the broadest ownership rights.

Acquisition

Transfer of full ownership occurs upon execution of the sale deed. Sale deeds are drawn up in notarised form and need to be registered in the applicable land and mortgage register (in Polish “*księgi wieczyste*”). The registration makes the information about the transfer public and creates a presumption of public knowledge of the transfer.

Perpetual usufruct

Perpetual usufruct (in Polish “*użytkowanie wieczyste*”) is specific to the Polish legal system and is a widely used type of real property right. It is commonly used in relation to real property held in full ownership by the State Treasury or by local authorities because of their reluctance to give up ownership of land and their willingness to receive annual usufruct fees.

General

A perpetual usufruct is similar to full ownership. The main distinguishing features of a perpetual usufruct, in comparison with full ownership, are the limited duration of the right to enjoy the real property and the obligation to pay an annual fee.

The beneficiary of a perpetual usufruct enjoys the right to use a given real property and to draw benefits from it (such as rental income). The perpetual usufructuary automatically becomes the owner of any buildings that he may erect on land held in perpetual usufruct.¹ The terms of acquisition of ownership rights to any pre-existing building by the perpetual usufructuary should be addressed in the perpetual usufruct agreement. Perpetual usufruct agreements may provide for potential limitations as to the use and disposal of real property. The agreement may indicate the manner in which the real property is to be used.

Acquisition

Perpetual usufruct rights are freely transferable. However, the transfer is effective only upon registration of perpetual usufruct rights in the relevant land and mortgage register. This is unlike ownership’s transfer which is effective upon execution of the sale deed. The acquisition of perpetual usufruct rights requires the form of a notarial deed.

Duration

In principle, a perpetual usufruct is established for a period of 99 years. However, in limited cases, when the purpose of the grant of real property does not require a longer period, a shorter period of a minimum of 40 years is permissible.

¹ Article 235 §1 of the Polish Civil Code.

A perpetual usufructuary may apply for extending the duration of the perpetual usufruct for a further period of 40 to 99 years, which would follow the lapse of the initial period. An extension may be refused by the owner only in case of an important community requirement.²

Fees

The perpetual usufructuary is under an obligation to pay the owner a one time initial fee which amounts to 15% to 25% of the total value of the concerned real property and then, an annual fee of up to 3% of the total value of the real property. The actual percentage rate depends on contractual purpose of the land given for perpetual usufruct.

Local authorities are entitled to modify the perpetual usufruct fees once a year, in accordance with any potential adjustment in the value of the real property concerned. They can also change the applicable percentage rate used for calculation of the annual fee, if a lasting change of the land's purpose occurs. Readjustments are often introduced after sale transactions, which sometimes lead to major disputes.

Lease

It is possible for a perpetual usufructuary to grant tenancies and leases in real property held under a perpetual usufruct.

Limitations on acquisition

In Poland foreigners require a prior permit from the Ministry of Interior Affairs and Administration to acquire full ownership or perpetual usufruct rights over real property or to acquire direct or indirect control of companies holding such rights. Acquisitions made without the requisite permit are null and void.

Usually, an entity from the European Economic Area does not require a permit. There are exceptions for agricultural land, forests and second residences. Therefore, in principal, the acquisition of commercial property in Poland is permitted for all European Economic Area entities.

Local authorities have pre-emption rights over the sale of ownership rights or transfer of perpetual usufruct rights to real properties entered into the register of historical monuments and over the sale of ownership rights to real properties designated for public utility investments. In these cases, pre-emption rights have to be revealed in a relevant land and mortgage register to be binding.

Local authorities have pre-emption rights over the sale of ownership rights to undeveloped lands acquired by the vendor directly from the State Treasury or from local authorities and over any transfer of perpetual usufruct rights relating to undeveloped lands.

The Agricultural Property Agency (in Polish “*Agencja Nieruchomości Rolnych*”) has pre-emption rights with respect to sale of ownership rights to agricultural land and forests save for, on certain conditions, those properties which are held under tenancy agreements.

Protection of ownership by courts

In Poland courts recognise the ownership of real property. However, there is no formal system of re-privatisation. Therefore, it is worthwhile to verify whether there are any re-privatisation claims in relation to a specific real property.

² Article 236 of the Polish Civil Code.

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION

Real property rights

Real property rights by their very essence are capable of registration. With respect to real property rights, registration concerns: ownership, perpetual usufruct and limited real rights. Limited real rights include: cooperative member's right to the apartment (in Polish "*własnościowe spółdzielcze prawo do lokalu mieszkalnego*"), cooperative member's right to the commercial premises (in Polish "*spółdzielcze prawo do lokalu użytkowego*"), right to a single family house in residential cooperative (in Polish "*prawo do domu jednorodzinnego w spółdzielni mieszkaniowej*"), mortgage, easement and right of use.

Entry of a right in a land and mortgage register shall be presumed to reflect real property's actual legal status. A right which has been deleted from a land and mortgage register shall be deemed non-existent.

Should there be inconsistency between the legal status of the real property revealed in the land and mortgage register with its actual legal status, the contents of the register shall prevail in favour of the person who has acquired the right of ownership or another real property right by performing an act in law with the person duly entitled according to the land and mortgage registers' public credibility warranty (in Polish "*rękojmia wiary publicznej ksiąg wieczystych*").

The public credibility warranty shall not protect gratuitous dispositions or those made in favour of the acquirer acting in bad faith. The public credibility warranty does not act against certain rights (i.e. those which encumber real property by virtue of law, annuity, easement established under a decision of a relevant authority, an easement of necessary way or another easement established in connection with trespassing the boundary during construction of a building or another facility).

The public credibility warranty shall be excluded by a mention in the land and mortgage register concerning filing an application, lodging a complaint against the decision of the court's registrar, as well as by a mention concerning an appeal or *cassation*. It is also excluded by a warning with respect to the legal status revealed in the land and mortgage register being inconsistent with the actual legal status of the real property.

A limited real property right revealed in the land and mortgage register, shall have priority over such a right which is not revealed. The owner shall have the right to reserve the priority of another right or another's right equal position when establishing a limited real property right to be entered in the land and mortgage register.

Personal rights and claims

There are certain personal rights and claims which may be revealed in the land and mortgage register. Common personal rights and claims registered in the land and mortgage register include:

- 1) a right of lease or tenancy, a right of re-purchase and pre-emption, a right of annuity;
- 2) a claim to transfer the ownership of the real property or perpetual usufruct, or to establish a limited real property right; the above shall also apply to future or conditional claims (i.e. a preliminary sale agreement);
- 3) a claim resulting from determining the way of management or manner of use of the real property by co-owners or perpetual usufructuaries;

- 4) co-owners' claim excluding the right to dissolve co-ownership;
- 5) a receivable debt of a mortgage bank, secured by mortgage and information about such mortgage having been entered in the register of mortgage bonds security;
- 6) a right of use of a building or residential premises over a specified period during each individual year (time sharing).

A personal right or claim revealed in a land and mortgage register prevail over rights and claims acquired by way of act in law executed subsequently to such disclosure. This does not apply to easement of necessary way or an easement established in connection with the trespassing of the boundary during the construction of a building or another facility.

THE DEVELOPMENT OF LAND

The development of land, in particular when it is accompanied by a construction of a building, requires the obtaining of one or more of the following permits:

- 1) a permit to modify the purpose of a real property;
- 2) a decision on conditions of land's development (the so-called "WZiZT" decision, in Polish "decyzja o warunkach zabudowy i zagospodarowania terenu");
- 3) a building permit.

These permits do not condition the validity of an acquisition. They might also be obtained after the acquisition. However, it is advisable to obtain them after the execution of a preliminary agreement, which may contain one or more conditions precedent, and before the conclusion of the final agreement.

Modification of the purpose of land

The use of the real properties designated for agricultural and forest purposes is subject to substantial limitations when non-agricultural use of such lands is contemplated. Therefore, if the purpose of the land is neither industrial nor commercial, an application has to be made to modify the purpose of such real property. This implies a modification of the master plan, which constitutes a relatively complex procedure. This procedure involves meetings of the municipal council, publications and potential actions by third parties.

Moreover, a decision on excluding the land from agricultural production has to be obtained. This process is relatively simple but involves a cost for the modification. It may be significant when change of purpose of use concerns highly classified agricultural lands.

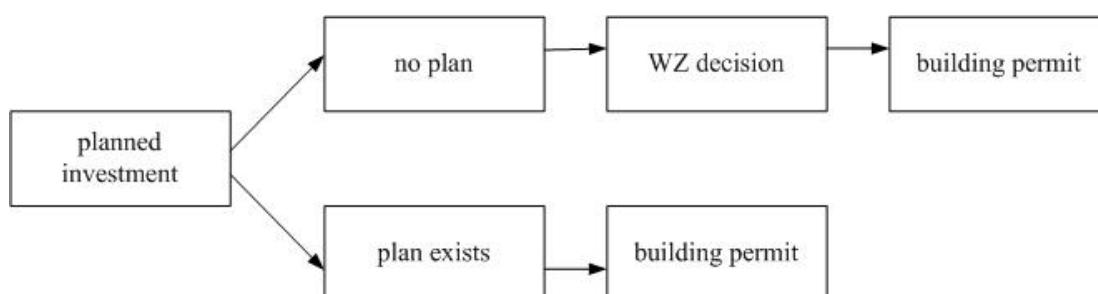
Master Plans

Master plans are major acts concerning particular areas. They set the rules of development of an area. They are adopted by local authorities. There is a legal liability to pay planning rent (in Polish "renta planistyczna") when an owner or perpetual usufructuary sells a property within 5 years from adoption of a master plan if value of the real property increased as a result of the adoption or amendment of a master plan. The fee is calculated as a percentage of the increase in the property's value. It may not exceed 30% of such increase.

WZiZT decision and a building permit

If a master plan does not exist, or if it does not state the purpose of a given plot of land and the conditions for its development, it is necessary to obtain a *WZiZT* decision to proceed with the investment, in particular to obtain the building permit.

In principle, the construction process can only be initiated upon the granting of the final building permit.



Building permit

A building permit may be granted on the basis of a master plan or *WZiZT* decision.

In order to file an application for a building permit, it is necessary for the applicant to hold a right to the real property in question for purpose of the construction (for example, ownership, usufruct, tenancy or lease).

The application for a building permit has to be accompanied by plans and architectural documentation and, above all, by the decisions of the local authorities (local security institutions on fire risks, public roads, electricity, gas, sanitary issues, etc.) confirming that there are no obstacles for the carrying out of the investment project.

Moreover, if the project is to be carried out on a site that has certain features (that is, carries certain risks) provided for by the law, it is necessary to deliver an environmental impact study concerning the prospective project.

Permit for use

Before providing the building to exploitation, it is necessary to notify such an intention to the competent authorities (local security institutions on fire risks, labour, sanitary and environmental issues) and, in principle, to obtain a permit for use.

LEASES

Polish law distinguishes between two types of leases: rental leases (in Polish “*najem*”) and tenancies (in Polish “*dzierżawa*”). Rental leases are used mainly for commercial and residential premises. Tenancies are used especially for industrial and agricultural property.

Tenancies

Tenancies are subject to rules similar to those applicable to rental leases.³

³ Article 694 of the Polish Civil Code.

Duration

In terms of duration, tenancies may be entered into for any period of time. However, any fixed term tenancies concluded for a period exceeding 30 years are transformed into tenancies for an indefinite period after the lapse of 30 year period.⁴

Termination

Unless the tenancy agreement specifies otherwise, each party is entitled to terminate a non-agricultural tenancy on six months notice effective before the end of a given tenancy year. A tenancy of agricultural land requires a one year notice period effective on the end of a given tenancy year.

Right of renewal

The tenant has no statutory right of renewal.

Pre-emption right of tenant

Polish law does not grant tenants statutory pre-emption rights over the rented real property (except in some cases relating to agricultural land⁵).

Rent and rent cap

A tenancy is subject to the payment of rent (except in some cases relating to agricultural land⁶). Rent can be monetary, non pecuniary or a share of profits.⁷

Unless otherwise stated in the tenancy agreement, rent is payable at the end of the payment period established in accordance with applicable custom and in the absence of such customs, at the end of every six months.⁸ There is no specific rent cap applicable to tenancies.

Rent review

The Polish Civil Code contains rules under which tenants can request rent reductions in case of considerably reduced earnings from the tenancy, provided that the reduced earning have occurred as a result of circumstances which are not attributable to the tenant.⁹ Otherwise, rent is adjusted in accordance with the relevant contractual provisions.

Use

The tenant cannot change the purpose of use of the real property held in tenancy without the owner's consent. Generally, the tenant must exercise his rights in accordance with the rules of good management.¹⁰

⁴ Article 695 §1 of the Polish Civil Code.

⁵ Agricultural System Act 2003.

⁶ Article 708 of the Polish Civil Code.

⁷ Article 693 §2 of the Polish Civil Code.

⁸ Article 699 of the Polish Civil Code.

⁹ Article 700 of the Polish Civil Code.

¹⁰ Article 696 of the Polish Civil Code.

Maintenance

The tenant must carry out the requisite repairs in order to prevent any deterioration in the real property held in tenancy.¹¹

Transfer

Transfer without the prior consent of the landlord is not permitted.

Subtenancy

The creation of a subtenancy is not permitted unless the prior consent of the landlord is granted.¹²

Financial Leases

The Polish Civil Code contains general rules on financial leases (in Polish “*leasing*”). Under a financial lease, the leased asset remains the property of the financing party and the user is granted an exclusive right to use such asset. The parties may agree that after the expiry of the agreement, the user will be entitled to acquire the asset from the financing party.

COMMERCIAL LEASES

No specific statute

In Poland there is no specific statute or regulations applicable to commercial leases. The same general provisions of the Polish Civil Code apply to both commercial and residential leases.¹³

Form

A lease of real property for a term longer than one year must be concluded in writing. Otherwise, from the beginning, a lease is deemed to have been concluded for an indefinite period.¹⁴

Duration

A lease agreement may be concluded for a definite or indefinite period of time. However, a lease agreement concluded for a period longer than ten years shall be deemed, after the lapse of the ten year period, to have been concluded for an indefinite period.¹⁵

Termination

Any lease may be terminated by the mutual agreement of the parties.

A lease for a definite period may be early terminated only in accordance with the particular cases provided in the lease agreement.¹⁶

¹¹ Article 697 of the Polish Civil Code.

¹² Article 698 of the Polish Civil Code.

¹³ Articles 659 and following of the Polish Civil Code.

¹⁴ Article 660 of the Polish Civil Code.

¹⁵ Article 661 of the Polish Civil Code.

¹⁶ Article 673 §3 of the Polish Civil Code.

A lease for an indefinite period may be terminated by either party at any time in accordance with the notice period provided in the lease agreement. In the absence of express provisions in the lease agreement, the following statutory notice periods will apply:

- if rent is payable at intervals exceeding one month, then three months notice should be given with effect at the end of the calendar quarter;
- if rent is payable monthly, then one months notice should be given with effect at the end of the calendar month;
- if rent is payable less than monthly, then three days notice should be given;
- if rent is payable daily, then one day notice should be given.

Right of renewal

A tenant has no statutory right of renewal. If the tenant continues to use the leased premises after termination of the lease or the expiry of the lease term, the lease is renewed for an indefinite period unless the landlord opposes such non contractual use.¹⁷

Pre-emption right of a tenant

Polish law does not grant tenants' pre-emption rights over the leased property.

Rent and rent cap

The parties are free to agree the rent of the leased property. Polish law does not provide for any rent caps with respect to commercial leases.

Rent review

Polish law does not contain any rent indexation provisions for commercial leases. Rent is adjusted in accordance with the relevant contractual provisions. References to the European (ECEPI or MUCPI) or US Consumer Price Indexes (depending on whether the calculation of the rent in PLN is based upon amounts given in EUR or USD) or the Consumer Goods and Services Price Index published in the Monitor Polski by the President of the Main Statistical Office (in Polish "*Prezes Głównego Urzędu Statystycznego*") are often used.

Most costs rechargeable to tenants

Mostly, costs may be recharged to a commercial tenant. Pursuant to Article 681 of the Polish Civil Code, only minor expenses for repair of the leased premises are to be covered by the tenant. However, the parties may agree otherwise.

Improvements

If a tenant has carried out improvements to the leased premises, the landlord can decide, at the end of the lease, either to keep the improvements in consideration for a payment equal to their value as at the expiry of the lease or to require the tenant, at his expense, to restore the leased premises to their original condition. However, the parties may agree otherwise.

¹⁷ Article 674 of the Polish Civil Code.

Transfer of real property by landlord

A new owner of the leased real property automatically becomes the landlord and a party to all existing lease agreements.¹⁸

Leases other than those concluded for a definite period, and with an authenticated date where the leased property has already been handed over to the tenant, may be terminated upon sale of the property subject to statutory notice periods.¹⁹

Transfer of lease by tenant

Any transfer without the prior consent of the landlord is not permitted.

Sublease

As far as the lease of premises is concerned, subletting is permitted exclusively upon the consent of the landlord.²⁰ Subletting of any other assets is permitted unless expressly prohibited in the lease.²¹

TAX**Transaction costs***Sale of undeveloped land***VAT**

The sale of plots of land is generally subject to VAT, provided the transaction is carried out as part of the economic activity of the seller.

The applicable regime is the following:

- 22% VAT rate in case of the sale of land for construction purposes;
- VAT exemption in case of sale of undeveloped land other than construction land and land designated for development.

Transfer Tax

Transactions concerning real property that are exempt from VAT are subject to a tax on civil acts (transfer tax).

The rate of the transfer tax is 2% of the market value of the relevant real property. It is the purchaser who is liable for payment of the transfer tax.

¹⁸ Article 678 §1 of the Polish Civil Code.

¹⁹ Article 678 §2 of the Polish Civil Code.

²⁰ Article 688(2) of the Polish Civil Code.

²¹ Article 668 of the Polish Civil Code.

*Sale of developed land*VAT

If buildings are sold together with the land, all the real property is taxed according to the tax rate applicable to the building – hence the building determines the tax regime for the transaction.

The applicable regime is the following:

- 22% VAT rate in case of individual premises in residential apartment buildings and other buildings;
- 7% VAT rate applicable in case of residential buildings (until 31st December 2007);
- VAT exemption applicable in the case of buildings classified as used goods.

Transfer tax

Transactions concerning real property exempt from VAT are subject to a tax on civil acts (transfer tax). The rate of the transfer tax is 2% of the market value of the relevant real property.

Taxation of capital gains*Capital gains realised by legal entities*

Capital gains realised by legal entities are subject to corporate income tax.

The purchase price constitutes the revenue of the seller for corporate income tax purposes. The taxable base is constituted by the revenue obtained from the sale of the real property decreased by the expenses incurred in connection with the purchase of real property. In addition, the company selling the real property is allowed to decrease the revenue from the sale by the expenses incurred in relation to the sale if these expenses are compliant with the general requirements concerning the tax deductible expenditures. Expenses must have an influence on the acquired revenue, i.e. real property agency costs, costs of translations, notary fees, costs of extracts from maps and mortgage registers etc. The sale price must reflect market value.

The deductible revenue earning costs amount to the difference between the initial value of the real property and the amount of depreciation write-offs. They are tax deductible at the moment of sale.

Depreciation

The annual rate for depreciation write-offs for new non-residential buildings and premises is 2.5%. The depreciation period for such real properties is 40 years.

As of 1st January 2007, new regulations concerning used non-residential buildings and premises were enacted. At present, the minimum depreciation period for such buildings is calculated as the difference between the basic depreciation period of 40 years and the period between the date when the building was first handed over for use and the date when it was entered in the tax payer's records. Thus the calculated period cannot be shorter than 10 years. Used residential buildings can be depreciated in accordance with the previous rules, with an amortization period lasting 10 years.

Leases*VAT*

Commercial leases are generally subject to VAT at the rate of 22%. VAT invoices must be drawn up on a monthly basis, or in another settlement period (i.e. quarterly) if the parties agreed such in the lease agreement. A VAT invoice should be issued, at the latest, 7 days from the day on which the VAT liability arose, however not earlier than 30 days before that event.

Rent deposits (in Polish "*kaucja gwarancyjna*") do not constitute VAT taxable turnover as they are reimbursed at the end of the lease.

Corporate income tax

Rent from commercial leases is considered as part of the landlord's revenue for tax purposes. This revenue, less tax deductible costs, constitutes taxable income which is subject to corporate income tax, currently at a flat rate of 19%. Rent is tax deductible as a revenue earning cost for the tenant.

Financial leases*VAT*

The Financial lease of real property is subject to 22% VAT. The following agreements constitute financial leases for VAT purposes:

- lease agreements under which depreciation write-offs are made by the tenant; and
- lease agreements of land,

provided that they include an option for the tenant to acquire the right to the property once the last instalment of rent under the lease is paid.

For VAT purposes, a financial lease constitutes a delivery of goods. The VAT liability arises when (i) the real property is delivered; or (ii) an invoice evidencing the total value of the financial lease agreement is issued, but not later however than within 7 days following the day when the real property is delivered.

The VAT rate is determined according to the nature of the goods which are the subject matter of the financial lease.

Corporate income tax aspects

Where:

- a financial lease is executed for a definite period;
- the total amount of fees under the lease (excluding VAT) is equal to the initial value of real property that is the subject of lease; and
- the agreement contains a provision pursuant to which depreciation write-offs will be made by the lessee,

the revenue of the landlord and the revenue earning costs of the tenant shall not include that part of the fees under the lease which constitute the repayment of the initial value of the leased real property.

Detailed rules relating to the method of calculating revenue and revenue earning costs are applied to the transfer of ownership from the landlord to the tenant at the end of the lease. Special rules relating to the calculation of revenue and revenue earning costs apply with respect to financial leases of land.

Land revenue tax

In Poland there is no land revenue tax.

Real property tax

Real property tax applies to natural and legal persons and organizational units without legal personality who are in fact owners, possessors or perpetual usufructuaries of:

- land;
- buildings and parts thereof; and
- other constructions and parts thereof related with conducting a business activity.

The taxable base depends on:

- the surface area of the land;
- the usable surface of a building or its part; and
- the value referred to in the Income Tax Act as being the basis of depreciation write-offs in a given year for buildings and parts of buildings (in case of total write-off, the taxable base shall be equal to the value of the building as at 1st January of the year the last depreciation write-off was made).

Specific rules must be applied when calculating the usable surface.

The tax rates are set by local authorities. The Act on Local Taxes and Charges provides for a cap. The cap is currently PLN 18.60 (approximately EUR 4.80) per square meter for buildings used for business activities.

The real property tax payment dates vary depending on tax payer is a legal person or an organizational unit without legal personality (monthly payments) or a natural person (quarterly payments).

Some plots of land, buildings and infrastructure are exempted from real property tax.

LEGAL COSTS REGARDING REAL ESTATE ACQUISITIONS**Notary fees**

The maximum rates of notary fees (in Polish "*taksa notarialna*") depend on the value of the relevant transaction. The fees are as follows:

- up to PLN 3,000 – PLN 100;
- from PLN 3,000 to PLN 10,000 – PLN 100 + 3% of the amount in excess of PLN 3,000;
- from PLN 10,000 to PLN 30,000 – PLN 310 + 2% of the amount in excess of PLN 10,000;
- from PLN 30,000 to PLN 60,000 – PLN 710 + 1% of the amount in excess of PLN 30,000;
- from PLN 60,000 to PLN 1,000,000 – PLN 1,010 + 0.5% of the amount in excess of PLN 60,000;

- above PLN 1,000,000 – PLN 5,710 + 0.25% of the amount in excess of PLN 1,000,000 where the maximum fee shall be limited to six times the official average salary paid in the national economy of Poland for the previous year. PLN 2,477.23 was the official average salary in 2006. Therefore the maximum notary fee in 2007 is PLN 14,863.38, which is approximately EUR 3,850.²²

Pursuant to Article 89 §1 of the Notarial Law, the parties to a notarial deed are jointly and severally liable for payment of the notary fees.

Lawyers

There are no statutory restrictions.

Land and mortgage register

Charges for entries into land and mortgage registers (in Polish "*księgi wieczyste*") are as follows:²³

- PLN 200 for entering ownership, perpetual usufruct and limited real property rights;
- PLN 150 for entering personal rights and claims, changing entries concerning limited real property rights, ownership of agricultural properties of a maximum area of 5 hectares;
- PLN 60 for establishing a new land and mortgage register, entering a merger or division, correcting an entry, entering mentions on discrepancies between the registered and factual legal status of a real property;
- half of the respective charge is due for deleting a relevant entry.

Publication

There are no statutory publication requirements.

SECURITY USED IN REAL PROPERTY FINANCINGS

The most commonly used forms of security are mortgages. However, security assignments, registered pledges, financial pledges, power over bank accounts and additional security are often used in commercial real property financings.

Mortgages

Mortgages may be established over real property held in full ownership, over real property held in perpetual usufruct and over receivable debts secured by mortgage.

Security assignments

Security assignments are most often unconditional, which means amounts are paid onto the lender's account and transferred back to the borrower in the absence of default. However, it is possible to conclude a security assignment agreement which is conditional on the occurrence of a default. Nevertheless, arrangements concerning security assignments vary from case to case.

²² Ordinance on maximum notary fees 2004.

²³ Court Fees Act 2005.

Debtor notification is required. Otherwise, payments made to the borrower constitute a valid discharge.

Bank lenders are able to certify the date of the assignment, which makes such assignment binding in the event of insolvency proceedings. There are no particular costs / registration requirements prescribed by law.

Registered pledge

A registered pledge is in many cases the most practical and efficient way for a lender to secure the borrower's liabilities. It is established by way of a written agreement between the parties and is registered in the pledge register. This type of security may be used to secure the financing of any transaction, by means of encumbering almost all types of movable assets. It is relatively cheap to establish, although sometimes the registration procedure is rather lengthy.

Financial pledge

Financial pledge is a form of security consisting in a pledge being established over cash or financial instruments. It is established by way of a written agreement and annotation at the pledged account, in order to secure monetary claims and financial claims (i.e. claims which are provided by financial instruments).

Powers of attorney over bank accounts

The borrower signs a power of attorney in favour of its lending bank over an account with this bank, which is conditional on default. This involves the payment of PLN 17 (approximately EUR 4.50) stamp duty.

Additional security

Cash deposits

Polish law contains a special framework for cash deposit agreements. Title to a specified amount is transferred to the lending bank on the condition that it will be re-transferred to the borrower (or a third party) upon repayment of the secured debt. The right to the re-transfer is lost if the loan is not repaid. There are no particular costs / registration requirements prescribed by law.

Guarantees

Specific provisions apply if a guarantee is issued by a financial institutions. There are no particular costs / registration requirements prescribed by law.

Submission to enforcement proceedings

Deed on submission to enforcement proceedings is made in writing, if in favour of a Polish lending bank. Such submission shall specify a maximum amount and a validity period. It entitles the lending bank to apply directly to the court for an enforcement clause, without an examination of merits.

A foreign bank or a non bank lender requires a notarised form of a deed on submission to enforcement proceedings. The notary fees will depend on the value of the transaction.



About the Law Firm

Gide Loyrette Nouel is an international law firm that has been advising real estate investors since 1920. Gide Loyrette Nouel has been present in Central and Eastern Europe since 1991.

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