

LEX MUNDI
PUBLICATION



ISSUES RELATING TO FOREIGN INVESTMENT

POLAND

Wardyński i Wspólnicy sp.k.

CONTACT INFORMATION:

Tomasz Zasacki

Wardyński i Wspólnicy sp.k.

Al. Ujazdowskie 10

00-478 Warsaw (Poland)

Tel: +48 022 437 82 00; +48 022 537 82 00

Fax: +48 022 437 82 01; +48 022 537 82 01

tomasz.zasacki@wardynski.com.pl

1) Is national governmental permission required for foreign investors to acquire real estate? If so, please identify.

As a rule, pursuant to the Act on Acquisition of Real Estate by Foreigners of 24 March 1920 (Journal of Laws of 2004, No. 167, item 1758 as amended), the acquisition of Polish real estate by foreigners requires them to obtain permission from the Minister of Internal Affairs and Administration, otherwise the transaction is invalid. The above Act does not apply to closed-end investment funds and special, open-end investment fund to which rules and limitations stipulated for closed-end investment fund apply within the meaning of the Investment Funds Act of 27 May 2004 (Journal of Laws of 2004, No. 146, item 1546 as amended).

Under the above Act on Acquisition of Real Estate by Foreigners, a “foreigner” is defined as: (1) an individual not holding Polish citizenship, (2) a legal entity having its registered (head) office abroad, (3) a company with no legal personality incorporated under the laws of foreign countries by the above mentioned parties and having its registered office abroad, (4) a legal entity or commercial company with no legal personality that has its registered office in Poland but is directly or indirectly controlled by the above mentioned parties.

However, bearing in mind that Poland is a member state of the European Union (hereafter “EU”), foreigners from the European Economic Area (hereafter “EEA”) are treated on privileged conditions.

As a rule, the obligation to obtain permission by entities that are not citizens and/or entrepreneurs from the EEA, refers to any form of acquisition of ownership right or perpetual lease right to a real estate excluding real estate constituting its habitual residence and together with a garage, unless such real estate is located within a Border Zone. As a rule, citizens and/or entrepreneurs from the EEA are free to acquire Polish real estate without permission unless such real estate is designated as agricultural real estate or forest real estate

LEX  MUNDI

THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

(restriction limited for a 12-year period following Polish accession to the EU) or as a second house (restriction limited to a 5-year period following Polish accession to the EU).

2) Are there other national restrictions imposed on ownership of real estate by foreign investors? To acquire interests in entities which own real estate? If so, please identify.

Under sanction of invalidity, foreigners are, as a rule, also expected to obtain permission prior to taking hold of and/or acquiring interests in commercial companies that have real estate located in Poland, or prior to any other activity which might allow them to control such companies. Foreigners are not expected to obtain permission if the given interests are allowed into turnover on the regulated market. As a rule if a given company with real estate in Poland is already the owner or perpetual lessee of real estate located in Poland, which is deemed to be the company under control, foreigners prior to taking hold of and/or acquiring interests in such company are obliged to obtain the permission of the Minister of Internal Affairs and Administration. Although, as explained above, citizens and entrepreneurs from the EEA are not allowed to directly acquire agricultural or forestry real estate, the Act does not forbid them from taking hold of and/or acquiring interests in companies that are owners or perpetual lessees of such real estate.

3) Are foreign investors required to invest with a local partner? If not, is investment with a local partner advisable?

Foreign investors are not required to invest with a local partner; however, setting up a Polish company to conduct business in Poland is advisable. Foreign investors usually seek to obtain loans from Polish financial institutions; but due to difficulties in undertaking due diligence studies, Polish banks are hardly ever willing to lend funds to foreigners. It is also easier to deal with the Polish authorities when registered in Poland as there is less bureaucracy and fewer documents are required. Most commonly, Foreign investors form a Polish limited liability company with the minimum permissible share capital (50,000 PLN i.e. app. 12,900 EUR), they lease premises for a registered office (“seat”), and open a Polish bank account. The above activities are not complicated and not as time consuming as they once were.

4) What national taxes are levied solely on foreign individuals or entities acquiring or transferring real estate or interests in entities which acquire real estate?

There are no national taxes levied solely on foreign individuals or on entities acquiring or transferring real estate or interests in entities which acquire real estate.

5) Describe reporting requirements for reporting the acquisition, ownership or disposition of real estate which relate solely to foreign direct or indirect owners of real estate.

There are no special reporting obligations for foreign investors. Information on the acquisition or disposal of real estate and/or interests taken hold of and/or acquired by foreigners are automatically notified to the Minister of Internal Affairs and Administration by the public notary or other relevant authorities. Pursuant to the Act on Acquisition of Real Estate by Foreigners, the Minister of Internal Affairs and Administration keeps a register of real estate and interests taken hold of and/or acquired by foreigners with or even without permission.