

REAL ESTATE INVESTMENT IN POLAND

A foreigner may purchase real estate in Poland only after receiving permission from the Ministry of Internal Affairs and Administration (after approved by the Ministry of Defense and, in the case of farmland, also after receipt of approval by the Minister of Agriculture)

Oruga Group offers high quality legal services in the area of real estate and construction.

We strive to deliver business oriented legal advice on all legal aspects of real estate investments under the Polish law. Our team of real estate lawyers has extensive experience in advising on various types of real estate investment projects.

We provide the following legal services in the process of real estate investment:

- Real Estate Legal Due Diligence regarding the targeted property;
- Legal assistance in conducting negotiations with counter parties;
- Tax planning related to real estate investment structuring;
- Legal structuring of real estate transactions;
- In case of acquisition of a real property or rights over real property (asset acquisition):
 - drafting, preparation and reviewing of project documentation;
 - legal advice on preliminary sale-purchase contracts;
 - advising on all necessary documents needed for the successful completion of the transaction;
 - drafting of and advising on the notary deed;
 - legal consulting on the required procedures which have to be executed after the notary deed (procedures before Property Registration Court, Tax Authority and other state and municipal authorities);

In case of acquisition of a company holding the asset:

- legal due diligence regarding the company;
 - drafting of and advising on share transfer agreements;
 - drafting of and advising on amendments to the existing company documents (articles of incorporation, management contracts, etc.);
 - Legal structuring of project finance;
 - Negotiations with financial institutions;
 - Legal structuring of property management (drafting of contracts for maintenance and management, lease contracts, etc.)
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Construction Process Assistance

We also deliver the following legal services in the area of construction process :

- Legal advising on possible ways for optimizing the city planning and zoning regarding the targeted real property;
- Legal assistance through the whole process of creating and approval of a detailed city plan for the targeted real property;
- Legal consulting and assistance related to amendments to the existing detailed city plan for the targeted real property;

- Legal assistance through the whole process of approval of the project design by the municipal authorities;
- Legal assistance related to applying for and obtaining of a construction permit;
- Drafting/reviewing of and advising on the contracts between the investor and the other parties in the construction process – construction company, consultant, construction supervisor, technical manager and supplier of machinery and equipment;
- Legal assistance in relation to the required acts and protocols under the construction legislation;
- Legal assistance in obtaining of permission for utilization of the building.

For more information about real estate and construction projects, **please contact:**

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* Information on the acquisition of Real Estates, Shares and Units in Poland by foreign entities -

2. A foreigner may purchase real estate in Poland only after receiving permission from the Ministry of Internal Affairs and Administration (after approved by the Ministry of Defense and, in the case of farmland, also after receipt of approval by the Minister of Agriculture)

Purchasing property by foreigners is governed by the provisions of the Act of 24 March 1920 on Purchase of Real Estate by Foreigners with further amendments.

The foreigner, within the meaning of this Act is:

- 1) natural person without Polish citizenship;
- 2) legal person based abroad;
- 3) non-corporate company of persons referred to in points 1 or 2, based abroad, established in compliance with the legislation of foreign states;
- 4) legal person and non-corporate commercial company based in the territory of the Republic of Poland, controlled directly or indirectly by persons or companies referred to in points 1, 2 and 3.

3. In case of the commercial company, the controlled company is, within the meaning of the Act, the company in which the foreigner or foreigners directly or indirectly possess more than 50% of votes at the meeting of shareholders or at the general meeting, also as lienholder, user or on a basis of agreements with other persons, or have a dominant position within the meaning of the provisions of Article 4(1)(4)(b) or (c) or (e) of the Act of 15 September 2000 – Code of Commercial Companies (Dz. U. No 94, item 1037, of 2001 No 102, item 1117 and of 2003 No 49, item 408 and No 229, item 2276).

4. The acquisition of real estate within the meaning of this Act is the acquisition of the right of ownership to real estate or the right of perpetual usufruct, on the basis of any legal event.

5. The acquisition of a second house within the meaning of this Act is the acquisition by the foreigner referred to in Article 1(2)(1) of real estate intended for residential development or recreational purposes, which shall not be a permanent residence of the foreigner. This does not apply to the acquisition of a separate residential premises within the meaning of the Act of 24 June 1994 on premises ownership (Dz. U. of 2000, No 80, item 903 and of 2004, No 141, item 1492).

Article 1 a. 1. The permit referred to in Article 1(1) is issued upon request of the foreigner if:

1) the acquisition of real estate by the foreigner does not pose any risk to the defensiveness, national security or public order and is not in contradiction with social policy and public health considerations,
2) the foreigner proves that there are the circumstances confirming its bonds with the Republic of Poland.

2. The circumstances confirming the foreigner's bonds with the Republic of Poland may include, in particular:

1) Polish nationality or Polish origin,
2) being married to a citizen of the Republic of Poland,
3) (1) having a temporary residence permit, with the exception of the permit granted pursuant to Article 53a(2) of the Act of 13 June 2003 on foreigners (Dz. U. of 2006, No 234, item 1694, as amended), permanent residence permit or European Community long-term residence permit,
4) membership in the governing body of business operators referred to in Article 1(2)(4),
5) pursuing business or agricultural activity in the territory of the Republic of Poland in compliance with the provisions of Polish law.

Exceptions from the obligation to obtain a permit:

The following do not require obtaining the permit:

1) acquisition of a separate residential premises within the meaning of the Act of 24 June 1994 on premises ownership;
2) acquisition of a separate business premises intended for garages or share in such premises, if it relates to satisfying the housing needs of the purchaser or owner of real estate or separate residential premises.
3) acquisition of real estate by the foreigner residing in the Republic of Poland for at least 5 years following the granting of the permanent residence permit or European Community long-term residence permit,
4) acquisition by the foreigner, being a spouse of a Polish citizen and residing in the Republic of Poland for at least 2 years following the granting of the permanent residence permit or European Community long-term residence permit, of real estate that as a result of the acquisition shall constitute spousal joint property,
5) acquisition of real estate by the foreigner, if on the day of the acquisition it is entitled to intestate succession from the real estate seller and the real estate seller has been the owner or perpetual user thereof for at least 5 years,

- 6) acquisition by the entity being a Foreigner for its statutory purposes, of **undeveloped** real estate whose total area in the entire country does not exceed 0,4 ha in cities,
- 6) acquisition of real estate by the foreigner, being a bank and also mortgagee, through taking over the ownership of real estate as a result of an unsuccessful auction under the enforcement proceedings,
- 7) acquisition or take-up by a bank, being a legal person (Foreigner), of shares or stocks in the company being a Foreigner, in relation to the bank's claims resulting from carried out banking operations.

It is not required to obtain the permit in case of foreigners who are citizens or business operators in the states being parties to the agreement on the European Economic Area or the Swiss Confederation, with the exception of the acquisition of:

- 1) agricultural and forest real estate, for the period of 12 years from the Republic of Poland's accession to the European Union (now it has been more years since Poland),
- 2) second house, for the period of 5 years from the Republic of Poland's accession to the European Union.

It is not required to obtain the permit in case of foreigners who are citizens of the states being parties to the agreement on the European Economic Area or the Swiss Confederation in the periods laid down in para. 2, in case of:

- 1) acquisition of agricultural real estate located in the:
 - a) Dolnośląskie, Kujawsko-Pomorskie, Lubuskie, Opolskie, Pomorskie, Warmińsko-Mazurskie, Wielkopolskie, Zachodnio-Pomorskie Voivodeships – after the expiry of 7 years from concluding an agreement of lease with a certified date, if during this period they personally pursued agricultural activity and legally resided in the territory of the Republic of Poland,
 - b) Lubelskie, Łódzkie, Małopolskie, Mazowieckie, Podkarpackie, Podlaskie, Śląskie, Świętokrzyskie Voivodeships – after the expiry of 3 years from concluding an agreement of lease with a certified date, if during this period they personally pursued agricultural activity and legally resided in the territory of the Republic of Poland,
- 2) acquisition of a second house:
 - a) if the buyer has been legally and continually residing in the territory of the Republic of Poland for at least 4 years,
 - b) for the purpose of pursuing business activity consisting in providing tourist services, whereby this exemption does not include citizens of the Swiss Confederation.

Citizens of the states being parties to the agreement on the European Economic Area or Swiss Confederation, who as of the day of the Republic of Poland's accession to the European Union were shareholders or stockholders of commercial companies based in the territory of the Republic of Poland, may include into the lease periods referred to in para. The period of lease of agricultural real estate by the company, if during this period, as shareholders or stockholders of the company, they personally pursued agricultural activity in that real estate and legally resided in the territory of the Republic of Poland.

Exemptions referred above do not apply to real estate located in the border area and agricultural land of the area exceeding 1 ha.

On May 1, 2016, 12-year- moratorium of Poland on selling the agricultural land to foreigners has ended. However, in November 2015, when PiS won the parliamentary elections in Poland, the issue of protection the Polish agricultural land came back as one of the priority of the first 100 days of the new PiS government. A new land act proposal was submitted to the Polish parliament by the new government with the justification to protect the agricultural land against the speculative purchase by investors, regardless nationality, in order also to protect family farms that according to the Polish Constitution are the core of the agriculture system in Poland. In April 2016, a new Act was adopted, starting April, 30, 2016.

Because of new land act in case of agricultural land acquisition additional permit is required (even for Polish nationals).

Price (service fee and government payment) for permit for Acquisition of Real Estate in Poland start from 1500 euro per one real estate.

Timeline 4-6 months (under polish legislation should be done within 2 months actually, but Ministry doesn't do it on time).

Legal assistance with acquisition of real estate per investment deal approximately 3-5% of the real estate price, but not less than 1000 euro.
