

# Real Estate Guide to Poland

# 2011

- legal
- tax
- accounting
- audit
- insurance issues



GLN

Gide Loyrette Nouel



MAZARS



GRAS SAVOYE

under the patronage of:



CCIFP  
CAMBIO DE COMERCIO INTERNACIONAL DE POLONIA  
POLSKIE WZGLĘDNIKI - WZGLĘDNIKI W POLSKĘ



POLSKO-HISPANSKIA  
IZBA GOSPODARZWA  
CÁMARA DE COMERCIO  
POLACO-ESPAÑOLA

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FINANCIERA EN POLONIA - HANDBOOK 2011



**POLSKO-HISPANISKA  
IZBA GOSPODARSKA  
CÁMARA DE COMERCIO  
POLACO-ESPAÑOLA**



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# I. Legal and economics conditions for real estate

## Title to real estate

The Civil Code provides for various types of legal title to property. Real property is usually held on the basis of either perpetual usufruct or full ownership.

### Full ownership

Full ownership provides the broadest scope of rights towards real estate and can be restricted only in exceptional circumstances (e.g. by zoning regulations). Real property owners enjoy:

- the right to possess property (*ius possidendi*)
- the right to make use of property (*ius utendi*)
- the right to appropriate the returns from property (*ius fruendi*)

- the right to change the form or substance of property (*ius abutendi*)
- the right to dispose of property (*ius disponendi*).

Owners are free to transfer ownership to another person, or to encumber it with other rights (e.g. usufruct, easements, etc.). However, the law provides for some exceptions in this respect, compelling the transferee to observe certain limitations (discussed later).

### Perpetual usufruct

A substantial part of land in Poland is owned by the State Treasury or local authorities, who can grant a right of perpetual usufruct of this land to third parties on the basis of a perpetual usufruct agreement.

In many ways perpetual usufruct is similar to full ownership. The right of perpetual usufruct entitles its beneficiary to use state-owned land for a period of 99 years. In exceptional cases, if the economic grounds for perpetual usufruct do not require the land to be let for so long, the land may be let for a shorter period of at least 40 years. Please note that an owner is entitled to terminate a perpetual usufruct agreement prematurely where the land is not used for the purpose specified in the agreement.

Buildings and other facilities purchased or erected on the land by the perpetual usufructuary constitute its property.

A perpetual usufructuary must pay the relevant public authority an initial fee when the agreement establishing perpetual usufruct is concluded, and an annual fee thereafter.

The fees are calculated as a percentage of the value of the land. The initial fee ranges from 15% to 25%, while the amount of annual fee depends on the purpose for which usufruct was granted and ranges from 0.3% to 3% of the value of the land.

The annual fee for perpetual usufruct can be reviewed, but no more than once per year and only where the value of the land has changed.

Certain procedures allow for perpetual usufruct to be converted into full ownership.

### **Full ownership v perpetual usufruct**

Concerning the right of perpetual usufruct, there is a distinction between *usus* and *fructus*, which are transferred to the holder, and *abusus*, which is retained by the State or local authority.

One fundamental difference between perpetual usufruct and ownership is that a transfer of perpetual usufruct only becomes effective once it has been entered in the Land and Mortgage Register, whereas a deed executed and authenticated by a notary is sufficient to transfer ownership. Thus, a situation may arise where property cannot be sold to a new investor, or it is difficult to obtain financing or certain authorisations, because the perpetual usufruct right has not been registered.

### **Two registers**

Ownership and perpetual usufruct of land are both subject to compulsory registration in Land and Mortgage Registers kept by district courts. These registers provide information on the current status of real estate and record any changes, including the area of land, buildings located thereon, the names of owners and possessors, rights and claims to the property and mortgages encumbering it.

In addition, local authorities keep a Land Register that contains information on the location, area of each plot, the manner of use of the property and the names of its owner and perpetual usufructuary.

If there is a discrepancy between the rights registered in the Land and Mortgage Register and the Land Register, the former will prevail. What is more, all rights registered in Land and Mort-

gage Register will be effective against and take precedence over:

- any unregistered rights and interests
- any rights or interests registered subsequently.

Claims and other interests related to real estate (e.g. rights of a lessee under a lease contract) may also be registered and thus become enforceable upon consecutive owners.

## Acquisition

### Contractual scheme

The acquisition of full ownership is principally governed by the provisions of the Civil Code dealing with ownership and sale.

Any contract for the transfer of real estate must be concluded in the form of a notarial deed. No act performed without observing this formal requirement can be deemed effective.

Notwithstanding the above, Polish law contains special provisions governing the sale of real estate belonging to the State Treasury, State-owned enterprises and local authorities.

Where the right of perpetual usufruct is concerned, a notarial deed is not sufficient. The transfer of perpetual usufruct only becomes effective when it is entered into the Land and Mortgage Register.

### Preliminary agreement

For practical reasons (e.g. the need to obtain financing) or due to statutory requirements, the acquisition of real estate in Poland is often carried out in two stages:

- conclusion of a preliminary sale agreement ("PSA")
- conclusion of a final sale agreement, once all conditions of the PSA have been met.

To be valid, a PSA must contain the essential elements of the final sale agreement, namely the subject of sale and the price.

The primary intention of parties to a PSA should be the execution of a final agreement. However, the intentions of the parties may change before a final sale agreement is signed.

Consequently, if a buyer expects to be duly protected, the PSA should be executed in notarial form. It is also advisable to include in PSA an application to enter a claim for the transfer of ownership or perpetual usufruct to the real property concerned in the relevant Land and Mortgage Register. Once duly registered, this entry will ensure that third parties are deemed to be in bad faith if they acquire the real property despite knowing that a promise of sale already exists.

The beneficiary may obtain a court order substituting the statement of intent of the party that is unwilling to conclude the final sale agreement.

If the PSA has been executed in writing (but not in a notarial deed) and one of the parties evades the transaction, the other party can only seek compensation for damages.

## **Right of pre-emption**

The right of pre-emption may arise out of statutory or contractual provisions. Where real estate is subject to a right of pre-emption, it may only be sold to a third party on the condition that the beneficiary of that right does not exercise his right.

Without delay, the seller must inform the beneficiary of the contents of a conditional sale agreement concluded with a third party. The beneficiary then notifies the seller whether he wishes to exercise the right or not. A contractual right of pre-emption may be exercised within one month of receiving notice of the transaction, unless other time limits have been agreed. The beneficiary may exercise his right by making a declaration to the seller in the form of a notarial deed. The beneficiary and the seller then automatically become parties to an agreement with contents identical to that initially concluded between the seller and the third party.

## Acquisition of land by foreigners

Where the seller sells such property to a third party unconditionally, or where he fails to notify the beneficiary of the sale or its essential terms, he will be liable for damages to the beneficiary of the pre-emption right.

However, if the State Treasury, a unit of local government, a co-owner or a lessee enjoys a right of pre-emption by virtue of the statute, a sale concluded unconditionally will be ineffective.

The basic legal act regulating the acquisition of real estate by foreigners is the Act on the Acquisition of Real Estate by Foreigners of 24 March 1920. After Poland's accession to the European Union, extensive amendments were introduced, as a result of the need to harmonise Polish law with Community law, and consequently the scope of restrictions was significantly reduced.

### Non-EU members

In principle, the acquisition of real estate by a foreigner requires a permit. A permit is issued by the Minister for Internal Affairs and Administration in the form of an administrative decision.

Foreigners are defined as: (a) individuals without Polish citizenship, (b) business entities with their principal place of business abroad, (c) a partnership of the entities described in points (a) or (b) without legal personality, with its principal place of business abroad and created in compliance with the applicable laws of the foreign state, (d) a business entity or a commercial partnership without legal personality with its principal place of business in Poland, directly or indirectly controlled by the entities mentioned in points (a) to (c).

A permit is required for the direct acquisitions of real estate (for acquisitions of both full ownership and perpetual usufruct), as well as for acquisitions or subscriptions by foreigners of shares in a company registered in Poland that owns real estate or holds it under perpetual usufruct, where that transaction re-

sults in obtaining control over the Polish company and/or the company or partnership is a controlled one and the shares are to be acquired by a foreign entity who is not a shareholder of the company or partnership.

### **EU members**

Following Poland's accession to the European Union, the acquisition of real estate in Poland by citizens and companies of the European Economic Area (the European Union plus Norway, Iceland, and Liechtenstein) and the Swiss Confederation no longer requires any permits, except for the acquisition of agricultural or forest land.

## **Verification of the legal status**

Before acquiring real estate, it is advisable to review the Land and Mortgage Register, the Land Register and any other documents pertaining to the legal status of the real estate.

The purpose of this review is to establish whether there is any litigation pending with respect to the land, whether any easements or mortgages encumber the land, whether any other rights have been granted in favour of third parties, or whether there are any other obstacles to its acquisition. It is also important to ensure that a given property is not affected by privatisation claims by inspecting historical archives and consulting the local authority ("*starosta*").

## **Town planning and construction**

### **Land development**

The Zoning Act of 27 March 2003 sets out principles according to which local government and public administration may develop spatial policy, as well as the procedures that apply when areas are allocated for particular purposes and when the principles for their development are determined.

Every municipality must adopt a zoning study. The study comprises a basic programme for the municipality's zoning, and contains considerable information of relevance to investors,

including present land use, development and utility connections, needs and opportunities for the municipality's future development, the legal status of land, and details of buildings and areas under special protection. The study is binding only upon the authorities.

In order to determine the use of any plot and a method for its development, each local authority must approve a local zoning plan, which is an act of local legislation (i.e. effective also upon private parties). It is impossible to adopt a plan if no study exists. Moreover, any plan that is inconsistent with the study is deemed invalid.

### **Modification of designated land use**

If the designated use of a real property needs to be modified (e.g. from agricultural to industrial or commercial use), this will involve the modification of the local zoning plan, which is a relatively complex and time-consuming procedure (it involves a meeting of the municipal council, the publication of notices and the risk of legal challenges from third parties). If no plan exists, a planning permit needs to be obtained.

### **Building permit**

Under the Construction Law Act, in principle, construction works may only commence once the final decision on building permit has been obtained.

The procedure of obtaining a building permit depends whether there is a binding local zoning plan for the area covering the real property concerned. If such a plan has been adopted, a building permit may be obtained on its basis and if there is no local zoning plan, then the investor must obtain a planning permit.

Since only part of Poland is currently covered by local zoning plans, the need to apply for a planning permit occurs frequently. A planning permit determines whether a particular investment project may be carried out on the plot concerned. The planning permit neither creates rights to the property nor infringes upon the ownership rights of third parties.

Certain construction works and the construction of certain structures provided in the Construction Law (e.g. repair of existing buildings, construction of small architectural structures, parking lots for up to 10 vehicles and utility terminals in buildings for electric power, water supply, sewage, gas, heat and telecommunications) do not require a building permit. In the above case, the construction works may commence if there are no objections within 30 days from notification to the relevant authorities.

## **Environmental proceedings**

Under the Act on Access to Information on the Environment and its Protection, Public Participation in Environment Protection and Environmental Impact Assessment dated 3 October 2008, environmental impact assessment proceedings must be completed before an application for a planning permit or a building permit. An environmental impact assessment is required where the planned investment is likely to have a significant impact on the environment or Nature 2000 areas.

As a result of the above proceedings, the competent authority will issue a decision on environmental considerations, which may impose certain obligations on the investor with regard to environmental protection. The decision is binding on the authority issuing the building permit. However, if the conditions of the planned investment change, the authority may demand that the environmental impact assessment be repeated.

## **Permit for use**

Prior to commencing the use of a building, an investor is obliged to notify the competent authorities (the local agencies responsible for fire risk, employment, hygiene and environmental issues) that the works have been completed, and must obtain a decision on permit for use.

A permit for use of the building will be issued once a mandatory inspection has been carried out. This inspection should ascertain whether the construction works have been performed in accordance with the terms and conditions of the building permit.

## Construction works contract

Under the Civil Code, a contractor is obliged to construct the building specified in the construction contract in accordance with the architectural plan and the principles of technology. The investor is obliged to make the building site and the architectural plan available to the contractor and, once completion has been certified, to pay the agreed remuneration.

Article 647 of the Civil Code governs the respective legal relationships between an investor, the general contractor and sub-contractors involved in the construction process and establishes the investor's and the main contractor's joint and several liability for payment of sub-contractors' remuneration. International FIDIC standards are accepted in Poland.

## Lease v tenancy

Polish law provides for the use of real property on the basis of certain legal instruments. These are limited proprietary rights (i.e. usufruct and easements) and obligations (two types of lease: *najem/dzierżawa* and lending for use).

Lease ("*najem*") and tenancy ("*dzierżawa*") are principally governed by the provisions of the Civil Code.

Both Polish and foreign individuals and business entities may lease real estate. There is no requirement to obtain a permit from the Minister for Internal Affairs. The main distinction between the two is that, under a lease agreement, a lessee is only entitled to use the property whereas, under a tenancy agreement, the tenant is entitled both to use the property and to collect the benefits therefrom. For this reason, tenancy is more common in agriculture and industry.

Lease and tenancy agreements may be concluded for definite or indefinite periods. The terms of lease and tenancy agreements can be freely established by the parties, subject to certain mandatory provisions of the Civil Code concerning termination periods and duration.



## II.

## Taxes and fees

### **Taxes on turnover (VAT, CTT)**

The supply of real property is, in principle, subject to VAT calculated on the value of land and buildings alike.

The standard rate of VAT for such transactions in 2011 is 23%, though a preferential rate of 8% or VAT exemption applies to some transactions. It is important that for VAT purposes the land (and the right of perpetual usufruct of the land), “share” the classification applicable to the buildings/constructions located on it.

The supply of residential developments, or parts thereof (but not commercial premises), will be taxed at 8%, if the usable area of residential premises does not exceed 150 square metres, or 300 square metres with respect to houses.

The VAT Act provides a complex and complicated system of VAT exemptions for the supplies of buildings/constructions. In general, an exception is provided for “used” buildings/constructions. The conditions for the VAT exception stipulated in the VAT regulations should be analysed in detail prior to any transaction. In certain situations, the parties to the transaction may resign from the VAT exception and opt for taxation in VAT of such supply. This option can be exercised if both parties are registered VAT payers and announce their intention to the appropriate tax authority. The VAT exemption applies also to transactions regarding undeveloped land classified as agricultural.

If the transaction is exempt from VAT, it will be subject to the Civil Transaction Tax (CTT) at 2% of the transaction value.

Transactions between individuals, acting in a non-commercial capacity, will also be subject to 2% CTT.

Starting from 1 December 2008, in-kind contributions of real properties are, in principle, subject to VAT as a supply of goods at the VAT rate applicable for contributed real property (this does not concern the situation where contributed real property is VAT exempt under VAT regulations).

## Income tax

In the majority of cases, income derived from the disposal of real property will be subject to income tax.

Depending on the circumstances, the tax liability on the disposal of real property will be calculated on one of the following bases:

- the general rule is that the disposal of real property will be taxed at 19%
- where an individual, acting in a non-commercial capacity, sells property:
  - after five years from the end of the calendar year in which the real property was purchased or developed – no tax



- purchased or developed before 31 December 2006 (if the rule from the point above cannot yet be applied), in the case of re-investing funds from the sale for the taxpayer's residential purposes (indicated in the PIT Act) – no or reduced tax (proportional to the percentage of re-invested funds from the sale)
- purchased or developed between 1 January 2007 and 31 December 2008, in which he has been registered for administrative purposes as resident for more than 12 months before the sale – no tax
- purchased or developed after 31 December 2008, in the case of re-investing funds from the sale for the taxpayer's own "residential purposes" (indicated in the PIT Act) – no or reduced tax (proportional to the percentage of re-invested funds from the sale)
- where an individual sells property acquired for business purposes – flat tax at 19%, or progressive tax at rates of 18%, 32% (depending upon which scheme the taxpayer has elected to follow).

For the entities subject to corporate income tax, the disposal of real property will be taxed at 19%.

Buildings and structures are entitled to claim tax depreciation. The standard rate of amortisation for buildings is 2.5% per year, over a period of 40 years. Where residential buildings/premises were used prior to their acquisition by a taxpayer for more than five years, a taxpayer is entitled to claim an accelerated rate of amortisation of 10% per year, over a period of 10 years. In the case of commercial buildings/premises, the 40-year tax depreciation period may be reduced by each full year from the year in which they were first entered into the fixed assets register, but it cannot be shorter than 10 years.

## Real estate tax

Real estate tax is levied on land, buildings, structures and construction equipment. The rate of tax for a given locality is determined by the municipal authority, up to a maximum imposed by the Local Taxes Act, which regulates this tax. When setting

the rate of real estate tax, a municipal authority is obliged to consider the following aspects of the property: its location, the activity carried out there, the type of development, its designated use and the method of exploiting the land. The authority has the power to grant some exemptions from real estate tax (where they are not provided by the Local Taxes Act).



### III.

## Valuation of properties classified as fixed assets

Initially, properties classified as fixed assets are recognised in the accounting books at the historical cost, i.e. according to the purchase price or manufacturing cost, if the buildings and structures have been raised by a given entity. Generally, the acquisition cost and the manufacturing cost include all costs incurred in the period of construction, assembly or adaptation of a fixed asset by the balance sheet date, or by the day of accepting a given property for use. In compliance with the accounting principles binding in Poland, also the borrowing costs attributable to the acquisition or construction of the fixed assets is capitalised as part of the cost of that asset (and consequently included in the value of the property). The purchase price and the cost of manufacturing fixed assets' are also adjusted by exchange rate gains and losses related to their financing.

## Valuation of investment properties

In the valuation made at the balance sheet date, the historical cost of fixed assets is decreased by depreciation charges and impairment loss. Depreciation affects all fixed assets, except for lands not intended for open-pit mining of minerals. In compliance with the Polish Accounting Act and in contrast to the tax principles, it is the economic useful life period of a fixed asset that is crucial for determining the depreciation rates. Local accounting regulations allow various depreciation methods (straight-line and declining balance methods) to be used. The choice of the appropriate method should however be relevant to the way in which a given asset is depleted. The entity should periodically verify the depreciation rates that it adopted and, if necessary, adjust them appropriately in the subsequent financial years.

At the balance sheet date, the value of fixed assets (the historical cost less any accumulated depreciation) is also reduced by accumulated impairment losses if it is highly probable that a given fixed asset brings no predicted economic benefits in future. Generally, according to local accounting principles, the value of fixed assets is not subject to revaluation that would increase it.

In conclusion, in contrast to the principles adopted by International Financial Reporting Standards (IFRS), the Polish legislation does not allow applying the revaluation model for the purpose of valuing fixed assets to be applied at the balance sheet date.

According to Polish legislation, investment properties refer to properties not used by the entity, but which the entity owns for the purpose of gaining economic profits resulting from an increase in the value of these assets or other benefits, e.g. from rental or sale.

Following the example of IFRS regulations (IAS 40 Investment Properties), the Polish Accounting Act allows alternative valuation methods of property valuation to be used in the case of

properties purchased for investment purposes. As a result, the entity can choose between two admitted models of valuation, i.e.:

- valuation according to the rules applying for the fixed assets (acquisition cost less depreciation charges and possible impairment losses)
- valuation according to the market value, or fair value determined otherwise.

Investment properties appraised at fair value are not subject to depreciation at the balance sheet date; nevertheless they are subject to tax depreciation according to general rules.

Generally, the fair value of property refers to its current market price at the balance sheet date reflecting both its characteristics (type, location, condition and destination) and its actual market situation, as well as detailed circumstances of the transaction. The results of investment property valuation to the fair value are posted in the profit and loss account as other costs or as operating revenues. In compliance with the tax legislation, the results of revaluation write-downs of a property's fair value are not included into costs and revenues – they refer to temporary differences being the basis for determining the assets or liabilities from the differed income tax. The property valuation method adopted by the entity must be described in its accounting policy documentation.





## IV.

### Financing forms of development projects

#### Financing forms of development projects

Real estate development activity in Poland may take various financing forms. Taking into account the origin of funds, we can distinguish internal and external financing. The choice of a particular financing form, or combination of selected financing forms, depends on many factors, including the investor's strategy. It should be noted that the type of financing affects the form of the balance sheet structure, in particular with regard to liabilities, as funds obtained for further development are at the same time a source of asset financing. When obtaining funds for financing the company's activity, various elements must be considered in order to ensure that the invested capital brings the proper rate of return, and to satisfy the requirements of the investor.

## Internal financing

Internal financing takes place if the company is recapitalised by its owners. Internal sources of financing include increasing the share capital or making contribution to the company's capital. Generally, additional payments may be returnable or not, depending on the provisions specified in the company's articles of association.

## External financing

Basic forms of external financing include credits and loans. Credits from financial institutions usually correspond to credits secured by a mortgage. The second kind of external financing is loans. Lenders could be affiliated entities as well as external organisations. In the case of loans granted by affiliated entities, it is important to remember that it might not be possible to recognise all interest as tax deductible costs. First of all, only paid or capitalised interest may be considered as a tax deductible cost. Secondly, in the case of loans granted to the company by its owners, tax regulations introduce the "thin capitalisation" rule. Basically, this consists in introducing limits for interest considered as tax deductible costs where the value of loans exceeds three times the amount of the share capital.

Loans granted by domestic entities not being financial institutions are also subject to additional taxation in respect of the tax on civil law transactions, and exemption is possible only if there is a direct relationship with the lender. In the case of loans received from foreign entities, possible taxes include withholding tax from paid or capitalised interest, unless the agreement on double taxation avoidance sets out exemptions in this scope.

In Poland, in contrast to the countries of Western Europe, leasing property is a rare form of external financing. In practice, obtaining funds by issuing bonds, commercial papers or shares on the capital market is also rather uncommon in Poland.

## Collateral forms

The choice of external financing form usually entails the obligation to pledge various forms of collateral. The most usual forms of collateral include:

- a mortgage on a given investment
- security against an entity's property
- bails, blockades of funds
- endorsements by banks, sureties under civil law, endorsements on bills
- bank guarantees securing the performance of a commitments from the project implementation
- commitment of owners to recapitalise the project (contribution agreement)
- subordination of loans repayment by project owners
- pledging of collateral by owners of the project on their own property with regard to external funds intended for financing the project
- a "letter of comfort" issued by the owners of the project, covering the liabilities of the SPV
- securities for credits taken by the SPV on property belonging to the owners of the project (the owners act as third parties on whose property the collateral is pledged to ensure the payment of credits, e.g. bails, blockades of funds, real estate mortgages, pledge on fixed and current assets and assignments as collateral)
- project repurchase agreements.

## **Organisational forms of business activity**

Business activity in the real estate sector may take various organisational forms. Polish legal regulations do not impose any particular form of conducting business activity. The investor is given a choice to carry out the investment within the frames of the activity conducted so far or within the frames of a company established to perform a given investment project.

## **Special purpose vehicles**

In practice, in Poland we very often deal with special purpose vehicles established for a given investment project, known as "project finance" in Europe. In the case of development companies, the property is part of main assets of the SPV. Banks, as lenders, accept the fact that the financial surplus generated by the project is the source of repayment of debt contracted by the SPV in connection with implementing a project. An SPV's property is, on the other hand, a guarantee for credit. Project

finance financing has a versatile character and generally concerns large, capital-absorbing investments. It may be applied in many areas of business. Project finance is mainly based on estimations of future results and cash flows of the company. SPVs are most often unbundled from already existing organisations, or are built up from scratch. This construction allows the investment project itself to be appraised, its effectiveness and profitability. Through an SPV, a given project is, in organisational and financial terms, separated from other projects that may be carried out by the sponsors of the project at the same time. However, in most cases, there still exists a relationship between the owner and the SPV itself, as banks often expect supplementary collateral. In principle, the financing applied in project finance does not depend on the credit reliability of an SVP's shareholders, unless they took on the responsibility for the project's success by taking over the entire recourse for debts contracted by the SPV.



## V.

### **Legal deadlines for drawing up and approving the financial statements in Poland**

Legal deadlines for drawing up and approving the financial statements in Poland are specified in the Polish Accounting Act.

It is the head of a given business entity who is responsible for drawing up the financial statements within the deadline of 3 months from the balance sheet date. The financial statements must include the following elements: introduction, balance sheet, profit and loss account, additional notes and explanations, and – if the financial statements are audited by a statutory auditor – also a statement of changes in equity and a cash flow statement.

The obligatory audit of financial statements by a statutory auditor applies primarily to joint-stock companies and limited liability companies provided they meet the conditions specified in Chapter VII, page 35.

Following the audit completion, the head of the business entity will present the audited financial statements and the report on the company's activity for the directors' approval. The financial statements are approved at the General Ordinary Shareholders Meeting by adopting relevant resolutions, which must be done within 6 months from the balance sheet date.

The profit distribution or coverage of loss is made on the basis of a legally binding approval of the financial statements. Resolutions approving the financial statements are not legally binding if no audit was conducted, despite an legal obligation.

Within 15 days from the approval date, the head of the entity must submit the financial statements together with the auditor's opinion and adopted resolutions to the appropriate court register. Even if the financial statements are not approved within the legal deadlines, they shall have to be submitted to the court register, and submitted once more within 15 days from approval.

The deadline of 15 days from the approval date applies also for submitting the financial statements and the opinion for publication in the Official Gazette of the Republic of Poland "Monitor Polski B". The deadline for submitting these documents to the Tax Office is shorter at 10 days.



## VI.

### Applied accounting principles – Polish standards v IAS/IFRS

The basic legal act regulating accounting principles in the Polish balance sheet law is the Accounting Act dated 29 September 1994 with later amendments. Its content covers accounting principles, the financial statements audit procedure and rules of conducting the activity in the scope of outsourcing bookkeeping services.

In principle, the provisions of the Accounting Act apply to the following undertakings with their registered office or place of management in the Republic of Poland:

- commercial companies and partnerships (including those under organisation), civil partnerships, subject to item 2 below, and also other legal entities, except for the State Treasury and the National Bank of Poland

- individuals, civil partnerships of individuals, general partnerships of individuals and professional partnerships, if their net income from sales of goods, products and financial transactions for the preceding financial year amounted to at least the PLN equivalent of 1.2 M EUR
- organisations operating under the Banking Law, regulations on trading in securities, regulations on investment funds, regulations on insurance activity or regulations on organisation and operation of pension funds, irrespective of their income
- organisational undertakings without legal personality, except for the companies mentioned in the points 1 and 2
- foreign entities, branches and representative offices of foreign companies, within the meaning of the regulations on the freedom of business activity
- undertakings not listed in points 1-5 above, if they receive grants or subsidies from the state budget, from the local government budget units or from special purpose funds for the performance of tasks assigned to them – starting from the beginning of the financial year, in which those grants or subsidies were appropriated.

In matters not regulated by the provisions of the Accounting Act, when adopting their accounting principles (policy), undertakings may apply local accounting standards issued by the Committee of Accounting Standards. If the relevant local standard is missing, undertakings may apply international accounting standards IAS.

The provisions of the Accounting Act also indicate entities that may apply its provisions optionally, i.e. undertakings preparing their financial statements according to the International Accounting Standards, International Financial Reporting Standards and related interpretations announced in the form of regulations of the European Commission, hereinafter referred

to as "IAS", apply the provisions of the Accounting Act and secondary legislation issued on its basis, in the scope not regulated by IAS.

Undertakings entitled to prepare consolidated financial statements according to IAS/IFRS are:

- banks
- the issuers of securities referred to in Article 4 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002
- the issuers of securities intending to apply, or applying for their admission to trading on one of the regulated markets of the European Economic Area countries
- undertakings belonging to a capital group where the parent undertaking prepares the consolidated financial statements in accordance with the IAS

The decision to prepare the financial statements in accordance with IAS/IFRS, or to withdraw from the preparation of financial statements in accordance with IAS/IFRS, by the undertakings referred to in the above last two points is taken by the approving body of the parent undertaking.

An undertaking's accountancy covers:

- accepted accounting principles (policy)
- keeping account books, based on accounting documents, containing records of events in a chronological and systematic order
- periodically determining or checking by way of stock-taking the actual balances of assets and liabilities
- measuring the value of assets and liabilities and determining financial result
- preparing financial statements
- collecting and storing accounting documents and other documentation specified in the Accounting Act
- auditing and publishing financial statements in the cases stipulated in the Accounting Act.

The account books must be kept in the Polish language and currency.

The Accounting Act defines the term “accepted accounting principles” (policy) as the solutions selected and applied by an undertaking, permitted by the Act, including those specified in the IAS, ensuring the required quality of the financial statements.

Undertakings are obliged to apply the accepted accounting principles (policy), giving a true and fair view of their property and financial standing as well as financial result. Within the scope of the accepted accounting principles (policy), an undertaking may apply simplifications, provided that this does not have a significant negative impact on the performance of the above mentioned obligation.

The accepted accounting principles (policy) should be applied in a consistent manner, and the rules applied to the grouping of business transactions, measurement of assets and liabilities, including amortisation or depreciation charges, determination of the financial result and preparation of financial statements should be identical over consecutive financial years, so that the information resulting from them is comparable year-on-year. The closing balances of assets and liabilities shown in the account books should be carried forward to constitute the opening balances in the account books for the following financial year.

When applying the accepted accounting principles (policy), an undertaking assumes that it will continue its operations to a no lesser extent in the foreseeable future, without being put into liquidation or becoming bankrupt, unless this is inconsistent with the factual or legal state of affairs.

## VII.

### The requirements of obligatory audit of financial statements

According to Article 64 of the Accounting Act, the annual consolidated financial statements of capital groups and annual financial statements of the following are subject to audit and publications, provided that they continue their operations:

- banks and insurance companies
- undertakings operating under legal regulations on: public trading in securities, investment funds, pension funds
- joint-stock companies
- other undertakings that met at least two of the following conditions listed below in the preceding financial year:
  - average annual employment calculated as full time jobs amounted at least to 50 people

- total balance sheet assets at the end of the financial year amounted to at least the PLN equivalent of 2.5 M EUR
- net revenues from sales of goods and products and from financial transactions for the financial year amounted to at least the PLN equivalent of 5 M EUR

The annual combined financial statements of investment funds with separate sub-funds as well as individual annual financial statements of such sub-funds are also subject to audit and publication.

Moreover, also financial statements prepared by acquirers and newly set up companies or partnerships, as well as the financial statements of undertakings preparing the same in accordance with the IAS, are subject to audit.

The entity authorised to audit the financial statements is selected by the body approving the financial statements.

Depending on the legal form of an undertaking, this body could be, for instance: for a joint-stock company – ordinary shareholders meeting, for a limited liability company – ordinary shareholders meeting, for a general partnership, civil partnership, professional partnership, limited partnership – owners of the company.

It is also possible for different bodies, including a supervisory board, to select the entity authorised to audit the financial statements, provided that it is regulated by other binding provisions, for instance bylaws or articles of association. If the entity auditing the financial statements is selected by an improper body, the audit carried out as a result of such improper selection is invalid.



## VIII.

### **Real estate development v contracts for construction services – accounting treatment**

The character of real estate development consists in production rather than in providing services. The products are premises or buildings constructed on the basis of the developer's documentation, in compliance with the technology and location indicated. The developer is in most cases the person or entity purchasing land, acquiring financing (e.g. in the form of loans and advance payments) and whose business activity covers the construction of real estate. After the construction is terminated and all formalities are satisfied, the developer sells or leases out separated real estate (houses, apartments).

As a rule, the developer concludes individual contracts "for construction and sale" at different times. Such contracts could

differ in significant provisions, in particular: in price for the square metre of the apartment, which could depend on the floor on which the office is located, in the finishing option, in the method of price indexation. In addition the deadlines for rendering accessible individual premises or buildings, and for transferring the ownership right for apartments or buildings might be different. This could also concern the schedule of advance payments for the price of the “ordered” real estate, as these elements are “subject to negotiation”.

Given that the developer concludes many individual contracts for construction, and afterwards for the sale of residential or office premises for a price specified in the contract, the business activity has features of rendering long-term services, the effects of which (revenues and costs) as of the balance sheet date could be determined in compliance with Articles 34a and 34c of the Accounting Act, since in the case of services with a long-term performance term, exceeding 6 months, which have not been accomplished by the day of drawing up the balance sheet, the revenues and costs should be matched with the reporting periods in which the contract was executed. In other words, they should be recorded in compliance with the actual work advancement, and not according to the invoices. However, in practice, this is impractical, as the measurement of the actual work advancement may be made in relation to the whole apartment block, and not in relation to individual premises covered by contracts and it would also be difficult to formulate and to update the budgets of costs for individual contracts (premises).

Moreover, it should be underlined that Articles 34a and 34c of the Accounting Act are addressed to entities rendering services of an individual character, specified in the contract, with an execution period longer than 6 months, the performance of which is significantly advanced and not terminated as of the balance sheet date. Usually the contractors concluding the contracts regulating the scope of services and the price with the developer may estimate predicted costs of construction

works and measure reliably the level of actual advancement of works under contract, as well as determine revenues and costs in particular periods of contract execution.

These provisions may not apply to production, even if its character is individual and the predicted period for its performance exceeds six months.

In addition, it is possible that at the balance sheet date the developer has no signed contract with prospective buyers of apartments, despite having accomplished the construction of several floors in the building, or there may be only a few contracts, some of which will refer to the construction of apartments located on floors that do not exist yet. It should be noted that the basic cost for the developer will be the payment to the subcontractors for the rendered services, and this payment is, as a rule, made after completing particular stages of works and does not directly concern individual premises.

In case no contract is signed, it is impossible to determine revenues and costs according to the level of work advancement, for instance because the price for rendering a service not yet ordered is unknown. It is also impossible to treat costs of the entire construction similarly, as in the case in which the construction is performed within the frames of one, single contract, as each of the contracts has an individual character. In the case of the developer, it is impossible in practice to settle the revenues and costs at the balance sheet date according to the level of performance of individual contracts, and the provisions of the Accounting Act in this scope stipulate that the revenues from an unfinished service, including the construction service, are determined in proportion to the work advancement in the period from the date of concluding the contract until the balance sheet date, after deducting the revenues that had impact on the financial result in the preceding reporting periods. Similarly, the manufacturing cost of an unfinished service, including the construction service, cover costs also incurred from the date of concluding the contract until the balance sheet

date. The costs incurred before the conclusion of the contract are included as assets, if it is probable that these costs can be matched in the future with revenues received from the buyer.

It is generally known that many preliminary contracts may be concluded only at the end of the investment, and the developer is the owner of the real estate until its sale confirmed by a notary deed. From an economic point of view, the concluded preliminary agreements are of a promissory sale character referring to the real estates under construction. Therefore, the real estate companies should recognise the revenues according to the rules applied with regard to the sale of finished products, only after the rights and benefits from the ownership right to the good (i.e. the real estate) are transferred to the buyer.



## IX. Construction sector and insurance in Poland

### **No obligatory insurance for the construction market such as the *Décennale/Inherent Defects* system in France**

One of the main differences between the Polish and French construction insurance market is that there is no ten-year insurance system.

As a result, Polish insurance companies do not offer either ten-year third party liability insurance or ten-year *Dommages Ouvrages* property insurance.

Although ten-year guarantees do appear in contracts for construction works, it is common for the construction company to bear the risk (contractual guarantees given by the General Contractor).

### Majority of construction insurance on the Polish market is voluntary

### Voluntary third party liability insurance connected with the construction sector

### Structure of third party liability insurance on the Polish market

One of the aims of Gras Savoye Polska as a leader on the construction insurance market was to separate the risk related to the guarantee from the construction company by transferring the risk to an independent financial entity. This is why we have launched ten-year *Inherent Defects* insurance policies onto the Polish market.

The only obligatory insurance in the construction sector is professional indemnity insurance (PI) for professional groups such as architects, civil engineers, etc.

The scope of cover of such **PROFESSIONAL INDEMNITY** policies is strictly regulated by legal regulations, stipulating relatively low liability limits as compared to the scope of potential damage. For example, for the third party liability of an architect, the liability limit required by law amounts to EUR 50,000. The same amount of the guarantee sum is valid for obligatory third party liability of a civil engineer.

Another important issue is that obligatory **insurance policies** for professional groups only concern individuals, and not employers, for example, design companies.

The most important third party liability insurance connected with the construction sector in terms of investment process risks remains voluntary.

Insurance cover offered within the framework of such policies may vary depending on:

- the insured's approach to insurance
- the insurance company issuing insurance policies

The structure of third party liability insurance applied on the Polish market, which is different from French standards, deserves particular attention. Polish third party liability insurance policies provide for:

- **basic scope of cover** obtained on the basis of the general terms and conditions of insurance officially



adopted by a given insurance company. Every insurance company establishes and offers its own general conditions, which differ from those applied by other insurance companies.

- **possibility to expand** the basic cover offered under the general terms and conditions by standard additional clauses offered by insurers in order to adjust the scope of cover to the client's needs.

The verification of the proposed cover under third party liability insurance requires a detailed analysis of the contents of both the policy and the general terms and conditions of insurance on which it is based.

Such an analysis falls within the scope of activities performed by brokers within insurance consulting services.

### **Contractor's All Risks insurance on the Polish market – structure**

As in the case of third party liability insurance, Contractor's All Risks insurance (CAR) differs from the French standards in terms of:

- scope of guarantees offered
- structure of insurance contracts: general conditions and additional clauses / clauses limiting or extending the scope of cover. The Polish insurance market commonly applies **Munich Re standard**.

The same concerns a loss of profit due to construction damage (ALOP – Advanced Loss of Profit), which is strictly connected with CAR insurance.

The analysis of the proposed scope of cover and the choice of relevant clauses extending the insurer's liability under CAR and ALOP policies is one of the basic duties of an insurance broker.

## **Insurance of investments in the operation phase: property and business interruption insurance (BI) and the possibility to obtain a ten-year guarantee**

In the operation phase, insurance products offered in Poland do not differ significantly from the standards of other countries, including those in France. Minor differences result from local common practices and their identification should not pose any problems to an experienced insurance broker.

As soon as the operation phase of the investment begins, the ten-year Inherent Defects insurance referred to above comes into force. Although this policy is issued and valid after the completion of construction works, one should remember that its conclusion ought to be taken into consideration as early as at the planning phase of the investment. This is due to the fact that it involves extra costs for the Investor, as well as the involvement of additional technical units (Bureau de Contrôle Technique) during construction works.

All detailed information on this subject should be provided by the insurance broker.

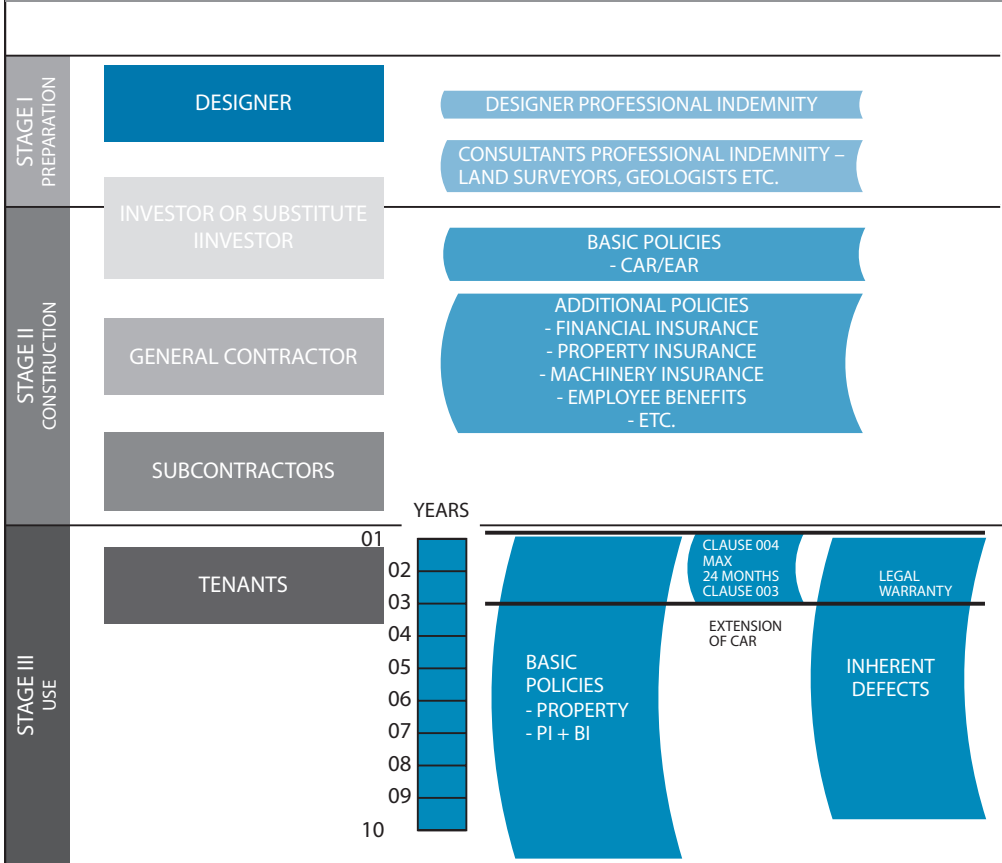
## **Role of an insurance broker as an advisor in the investment process – basic duties**

Professional services in the scope of investment insurance should cover:

- active participation of the broker in all stages of the investment process:
  - design stage
  - construction stage
  - operation stage
- drafting, in co-operation with the Investor's legal department, contractual clauses relating to insurance for contracts concluded by the Investor
- evaluating insurance policies offered by the Investor's service providers
- preparing appropriate insurance programmes for all stages of the investment process
- acting as intermediary in contacts with insurers and the administration of insurance contracts
- representing and supporting the Client during the entire process of claims handling



# INSURANCE OF CONSTRUCTION INVESTMENT PROCESS







# From Synergy to Innovation

**Synergy** is an innovative joint initiative of GLN, Mazars and Gras Savoye in Poland which arose from the idea to join the forces of three firms offering complementary services addressed to the same group of businesses in order to propose a wide range of services to their clients, including audit, accounting, insurance, legal and tax advisory on a one stop shopping basis.

GLN, Mazars and Gras Savoye are happy to share their expertise in the real estate and construction sectors which are the strongest specialization of those three firms. Among our clients there are leading international and Polish sector players.





**Gide Loyrette Nouel**

GLN Warsaw's clients include financial institutions, banks, insurance companies, investors, real estate developers, public companies and government ministries. The Firm advises some of the top players in Poland including: Auchan, Neinver, Unibail-Rodamco, Yaréal, Mayland Real Estate, Kuwait Petroleum Q8, Dalkia (Veolia), Finmeccanica Group, L'Oréal, France Télécom, Telekomunikacja Polska, Deutsche Bank PBC, Enterprise Investors, Bank Zachodni WBK, Société Générale, PGNiG, DnB Nord Bank, KGHM Polska Miedź, ArcelorMittal, Abris Capital Partners, Bonduelle, Danone, EDF, Sita Suez, BRE Bank, BGK.

The Warsaw Office provides a wide range of legal services, including:

- M&A Corporate Law and Private Equity
- Banking & Finance
- Capital Markets and Securities
- Energy, Infrastructure & Public Law
- Real Estate Law
- Litigation and Arbitration
- Restructuring and Insolvency Law
- Tax Law
- Intellectual Property Law
- Labour Law
- Competition Law and Distribution
- EU Law and Public Aid
- Environmental Protection Law

Mazars is an international, integrated and independent organisation, specialising in audit, accounting, tax and advisory services. Mazars can rely on the skills of 13,000 professionals in the 61 countries that make up its integrated partnership. It is ranked among the top audit and advisory firms in Poland and in Europe.

Mazars has over 18 years of experience on the Polish market, with two entities employing 160 professionals in Warsaw and Cracow offering Polish and foreign companies from diverse sectors of the economy a wide range of services including audit, tax and business advisory as well as accounting, HR advisory and payroll.

The real estate & construction sector involves many different players: project developers, housing corporations, building and infrastructure contractors, installation companies, investors, managers, users of the property, etc. However, within this diverse range of parties and activities, there are evident common developments and challenges. This not only requires effective co-operation, but also proper guidance with regard to the accounting, organisational and fiscal aspects. Mazars assists companies in facing these challenges by pooling the available knowledge into the real estate & construction sector. In this way, our clients can rely on up-to-date knowledge and professional advice.



Since 1992, Gras Savoye has continuously ranked in first position in insurance brokers ratings in France, and since 2004 in Poland. Gras Savoye was established in 1907 in Lille, in northern France. At present, the Gras Savoye Group employs over 3600 people and its network covers over 70 offices throughout the world.

The group operates within the framework of two companies:

- Gras Savoye Polska – insurance and reinsurance broker
- Pol-Assistance – insurance service company.

Gras Savoye, with its team of 280 employees and turnover exceeding PLN 125 mln, provides servicing of insurance lines covering property, motor, liability and life insurance as well as specialised products such as inherent defects insurance or weathers risks. Gras Savoye in Poland also provides services in the framework of mass insurance distribution, bank insurance, risk management, reinsurance, claims handling and assistance. The companies are five time winners of Business Gazelle. They were also granted the title of the Forbes Diamond.

For many years now Poland has been an important investment area. Its accession to the European Union and the approaching 2012 UEFA European Football Championships have contributed to the development of new projects and offer a chance to make forays into the Polish market.

For the last 17 years, the French Chamber of Commerce and Industry in Poland (CCIFP) has assisted foreign investors in launching their activities in Poland, and supported them in running their businesses. We regroup over 330 companies with foreign capital, mostly French and Polish, thanks to which we are perceived as a serious partner both by public and private entities. Due to the fact that we are in permanent contact with the senior managers of key players on the Polish market, we are able to initiate actions based on experience and knowledge of the best experts.

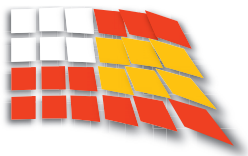
We also co-operate closely with ministries, local governments and central offices, and protect the interests of our affiliates. In recent years, we have been one of the most active entities involved in the promotion and development of Private-Public Partnerships. By holding conferences with the participation of the largest cities of Poland, and direct meetings with local government representatives and mayors, we help our affiliates in establishing new relations and gaining access to decision-makers.

We also hold a number of informal meetings that help businesses find new trade partners. Our Training Centre hosts cyclical seminars and training sessions that offer opportunities to gain the necessary knowledge of the Polish market and changes in the law, new trends in HR management, marketing and public relations.

Part of CCIFP, the Business Development Centre, is involved in finding business partners for foreign companies, preparing sectoral reports, organising B2B meetings and conducting product market research. Our offer includes finding modern offices in the centre of Warsaw, as well as auxiliary services such as employee recruitment and secondment, or VAT refunds.

CCIFP in numbers: In 2010, we organised more than 20 big events, 75 seminars, training sessions and experience sharing clubs, regional meetings in Cracow and Wroclaw, 25 trade missions and 150 B2B meetings with potential business partners. More than 6,000 people participated in our projects. We held meetings with Prime Minister Waldemar Pawlak, with the mayors of Cracow and Warsaw, and, during the Economic Forum in Krynica, we had the pleasure of hosting José Manuel Barroso, Jerzy Buzek, Bronisław Komorowski, Aleksander Kwaśniewski, many ministers and heads of the largest Polish companies at Café France organised by CCIFP.

For more information, please visit our web-site at [www.ccifp.pl](http://www.ccifp.pl)



**POLSKO-HISZPAŃSKA  
IZBA GOSPODARCZA**

**CÁMARA DE COMERCIO  
POLACO-ESPAÑOLA**

The Polish-Spanish Chamber of Commerce was founded 2000. It is a non-profit, official non-government institution that assembles Polish and Spanish companies that are engaged in mutual commercial and scientific co-operation. We associate over 100 member companies and are one of the most dynamic bilateral chambers functioning in Poland.

For our members we offer:

- possibility of taking part in fairs and trade missions to Spain;
- presenting the offer of your company among our Spanish partners, which are also regional and business line Spanish chambers who have unrestricted and direct access to companies from a given sector;
- possibility of obtaining professional market information;
- free placement of data and characteristic of your company as well as your offer on our bilingual webpage ([www.phig.pl](http://www.phig.pl));
- receiving publications of the Chamber and brochures sent by ministries;
- placement of data of your company in a bilingual folder;
- receiving invitations for participation in Spanish trade missions coming to Poland.

We co-operate with the Embassy of the Kingdom of Spain in Poland, the Polish Embassy in Madrid, the General Polish Consulate in Barcelona, the commercial framework of diplomatic post, the Polish Chamber of Commerce, and regional and business lines of Industrial Chambers.

For more information: [www.phig.pl](http://www.phig.pl)

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