1. Is perpetual fee simple ownership of real property permitted? If not, what are the principal forms of ownership, or other principal form of ownership, of real property?

Two main proprietary rights exist: legal ownership and perpetual usufruct. Ownership is the widest right to real estate. The owner has the exclusive right to use a thing, collect income from it and dispose of it. The perpetual usufruct right is a narrower right, which may be established by a strictly defined circle of owners (State Treasury or local authority units) in favour of another legal entity by concluding a contract to let on perpetual usufruct. For the perpetual usufruct right to arise an entry must be made in the land and mortgage register. The rights of the perpetual usufructuary are the same as those of an owner, although they last for the term specified in the contract. The perpetual usufructuary must use the land in accordance with the purpose indicated in the contract.

2. What instruments are used to convey fee simple ownership, or other principal form of ownership, of real estate?

Transfer of ownership or establishment and transfer of the perpetual usufruct of real estate require the conclusion of a contract in the form of a notary deed, which on principle is implemented upon its conclusion. Such contract has an obligatory and dispositive character.
3. How in this jurisdiction is the ownership of real property recorded or searched? Who generally performs the search?

The legal status of real estate is reflected in registers called land and mortgage registers, administered by chosen courts. The court keeps a separate land and mortgage register for each real estate. It is accepted that the legal status of real estate is as disclosed in the land and mortgage register. Denial of the existence of the rights disclosed in the land and mortgage register requires court proceedings. This is the presumption of veracity of the land and mortgage register, which is strictly linked with the principle of public guarantee of land and mortgage registers.

All land, buildings and premises are also contained in the land and buildings description records kept by county administrators. The records contain the following data:

1. for land – their location, frontiers, area, type of land and designation in the land and mortgage register.
2. for buildings – their location, permitted use, functional utility and general technical details,
3. for premises – their location, functional utility and usable space.

The records also contain other information, including in particular the owner in relation to state and local authority land – other individuals or legal entities, who hold the land and buildings or part thereof. Currently binding provisions envisage the transformation of records into a cadastre which apart from the above mentioned data includes the value of the real estate. The value of the real estate will be the basis for calculating the amount of property tax. It cannot be stated when these changes will come into force.

4. What assurances of ownership are available to purchasers of real property (e.g., title insurance or title opinions)? What is the cost of obtaining such assurances?

There is the general assurance of the indefeasibility of registration of title in the land and mortgage register. Prospective purchaser is secured by a public guarantee of the land and mortgage register which protects a purchaser who acquired the right from a person entered in the register. The guarantee also protects the safety of legal trade. A person entered in the land and mortgage register, entitled in respect of a specific right e.g. ownership, who may in reality not be authorised to dispose of this right, may effectively transfer it to a purchaser who acts in good faith. The guarantee does not protect transactions at no consideration e.g. donations. The purchaser must act in good faith in order to rely on the guarantee. A person who knows that the content of the land and mortgage register is inconsistent with the actual status thereof, or anyone who could easily have discovered this acts in bad faith. Land and mortgage registers are publicly available and anyone can familiarise themselves with their content at court under the supervision of a court official. The public guarantee of land and mortgage registers excludes notes entered in relevant parts of the register which constitute information warning a potential purchaser about pending proceedings which may change the content of the land and mortgage register. The cost of the extract from one land and mortgage register is insignificant and such title searches are the rule.
The institution of an insurance of title is not popular in Poland, especially, because of the public guarantee of the land and mortgage registers. However, if prospective purchaser is to buy shares in the company which owns the real estate then, such security becomes reasonable, but relatively expensive.

5. What are the most common forms of investment vehicles? What are the most common entities employed to own investment real estate in a tax efficient manner?

There are two methods of purchasing real estate: purchasing a company that owns real estate and the direct purchase of real estate.

The sale of real estate is taxed under the Civil Law Activities Tax (CLAT - 2% rate), or Value Added Tax (VAT). In general, VAT applies when the real estate is sold by an active VAT payer within the framework of economic activity. If a transaction is exempt from VAT, CLAT applies.

A 22% VAT rate applicable to the buildings also applies to the land on which such buildings are located.

The biggest advantage of the purchase of a company that holds real estate, rather than the real estate itself, is that CLAT of only 1% applies. Another is that there is no VAT on such a purchase.

A limited liability company is the most common entity which investors involve to purchase a real estate.

6. Has this jurisdiction adopted, or is it considering, legislation permitting the creation of real estate investment trusts or similar entities?

There is no concept of trust in Poland. However, Polish law permits for creating investment funds which are allowed to purchase real estate.

7. What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the direct transfer of real estate?

The sale of real estate is taxed by either the Civil Law Transactions Tax (CLAT) – at 2%, or by VAT - at a variable rate

VAT applies, in general, when the real estate is sold within a business by a VAT payer. If VAT does not apply, CLAT applies.

VAT on premises applies to the land on which such buildings are located.

The VAT standard rate is 22%, reduced to 7% VAT for:

- until 31 December 2007 - the acquisition of residential buildings that are to be occupied for the first time
- sale of perpetual usufruct of land for tenancy of buildings, or structures permanently on land, or parts of such buildings, or structures, if they are taxed at the rate of 7%.

If VAT applies a seller is liable. If CLAT applies, a purchaser is liable, but a notary public is the tax remitter.
8. **What state or local transfer, stamp or similar taxes are levied generally on sellers or buyers upon the transfer of interests in entities which own real estate?**

The sale of shares is subject to CLAT at the rate of 1% of the market value of the shares. According to the Civil Law Activities Act amended as of 1 January 2007, CLAT on the sale of shares is paid by the purchaser.

9. **How significant is local regulation and taxation of real estate? How significant is the variation of real estate law among political subdivisions of this jurisdiction?**

Local authorities may, or may not, have a zoning plan. If so, investment is relatively routine and can start after a building permit is obtained. If not, investment is more difficult and a decision on terms of construction and land development would have to be obtained, before a building permit.

In general, holding of real estate is subject to real estate tax and it is irrelevant from a real estate tax perspective whether the holder is resident or non-resident. Maximum rates for this tax are set by law, but municipalities can apply lower rates. Individuals are required to inform the tax office with jurisdiction for the real estate within 14 days after its purchase. Real estate tax is payable in quarterly instalments, but is payable only from the date of receipt of the tax authority’s decision on the amount of the tax liability.

10. **Must ultimate beneficial owners of entities which own real estate be disclosed as a matter of public record?**

There is no such obligation relating to the records held for the real estate.