CERHA HEMPEL

Real Estate *& Construction* Laws

IN AUSTRIA AND CEE

AUSTRIA
BELARUS
BULGARIA
CZECH REPUBLIC
HUNGARY
ROMANIA
SLOVAK REPUBLIC

Content

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This CERHA HEMPEL Guide to Real Estate and Construction Laws in Austria and CEE is intended to give the reader valuable insights into real property law in those countries of Central and Eastern Europe where we have offices. We have compiled an overview of those legal aspects in the jurisdictions covered which we think are the most attractive to foreign investors so that they get a feeling for the respective legal environment. As such, this Guide is intended only to provide a summary of the subject matters covered.

It is of a general nature, does not purport to be comprehensive, conclusive or up to date, and must not be relied upon as legal advice. If you would like to receive specific legal advice, please speak to your contact at CERHA HEMPEL or the key contacts referred to in this Guide.

All liability for damages (direct or indirect) from the information provided in this Guide is explicitly excluded. It is recommended that you seek professional legal advice prior to any business transaction involving real property.

ABOUT CERHA HEMPEL

CERHA HEMPEL is one of Austria's leading corporate law firms, with an integrated practice in Central and Eastern European. With a team of over 200 lawyers, we offer our clients expertise and experience in all areas of real estate and corporate and commercial law in Austria and Central and Eastern Europe. At CERHA HEMPEL, we have a dedicated team of experienced lawyers specialising in real estate and construction in CEE, all of whom have in-depth expertise coupled with a detailed understanding of the legal and business environments in which our clients operate. The collective experience of our Real Estate & Construction team means we are able to anticipate the needs of our clients and provide the very highest quality legal advice. Each client is served by an integrated team of specialists chosen specifically for the transaction in question.

The CERHA HEMPEL CEE Real Estate & Construction team handles this multi-faceted area of law through every phase of a project. Beginning with the acquisition of land, we support our clients in all aspects from project development, negotiating and drafting financing agreements, preparing planning and construction agreements, to residential and commercial leases. Our core areas of expertise include real estate transactions, project financing, handling landlord-tenant disputes and construction litigation, as well as assisting with claims management.

CERHA HEMPEL has built strong relationships with major market players such as investors, property developers and agents, as well as architects and civil engineers, enabling us to offer our clients project management services as well.

This expertise – combined with our extensive experience in Central and Eastern Europe and our Lex Mundi network – ensures that our clients receive high-quality, intellectually rigorous advice, across disciplines and across borders.

Vienna, May 2021

Austria

Real Estate Law in Austria

THE LAND REGISTER

Rights relating to real property, such as ownership, mortgages, easements, land charge obligations and other rights, are recorded in the Land Register (*Grundbuch*) administered by the District Courts. The folio identified by the Entry Number (*EZ, Einlagezahl*) and registered with the Land Register in connection with the number of the Cadastral Municipality (*KG, Katastralgemeinde*) makes the respective real property uniquely identifiable in Austria.

The "principle of registration" is the basic principle underlying the Land Register. This means that the acquisition, transfer, limitation and suspension of rights concerning real property can only be effected by registration in the Land Register. Until the legal transaction is registered in the Land Register, the parties to the contract only have contractual claims against one another for performance of the registration (in particular but not limited to transfer of ownership or fixed liability mortgages).

The Land Register is open to the public. Everybody has the right to access the register and to obtain extracts from it. Attorneys-at-law, notaries public and other registered users can obtain extracts from the Land Register online. The correctness and completeness of all rights and obligations registered in the Land Register with respect to real property may be relied upon by all. All registrations are registered in the Land Register in a ranking order (defining the priority of rights) on a first come, first served basis. Ranks can also be reserved for an upcoming transaction, such as an upcoming transfer of ownership (*Rangordnung für die beabsichtigte Veräußerung)* or for an upcoming mortgage registration (*Rangordnung für die beabsichtigte Verpfändung*).

Encumbrances

The most relevant encumbrances in relation to real property are mortgages (*Hypotheken, Pfandrechte*), easements (*Dienstbarkeiten*), land charge obligations (*Reallasten*), rights of first refusal (*Vorkaufsrecht*) and restrictions on sale and encumbrance (*Veräußerungs- und Belastungsverbote*), which can be registered in the Land Register and which are individualized rights relating to third party property. Encumbrances are registered in the Land Register also in a ranking order (defining the priority of rights) on a first come, first served basis.

Mortgages

A mortgage is a right of lien against a real property. A right of lien is the right granted to the creditor to obtain satisfaction from a specific real property if the debtor does not pay the debt as agreed. If the mortgagor does not fulfil its obligations, the mortgagee has the right to initiate legal enforcement proceedings with the competent court and to use the proceeds to cover any outstanding liabilities. Creditors are prohibited from obtaining ownership of the real property directly on the basis of a mortgage (*lex commissoria*). The same mortgage can be registered simultaneously on several land plots without incurring additional registration fees.

Easements and land charges

Easements are limited, precisely defined rights relating to third party real property. A distinction is made between "property easements" (*Grunddienstbarkeiten*) and "personal easements" (*Personaldienstbarkeiten*).

Property easements grant the respective owner of the "dominant" property certain rights over the "servient" property. A typical example would be the right to cross the servient property to access the dominant property (*right of way, Wegerecht*).

Personal easements are granted to a specific person. Only this person has the right to use a third party property in the specified manner.

The beneficiary of an easement is obliged to exercise the easement right by exercising great care with respect to the servient property.

Easements only place an obligation of sufferance or forbearance (*Duldung*) (passive obligation) on the owner of the encumbered real property.

Land charge obligations (*Reallasten*) on the contrary oblige the owner of the encumbered property to behave in a certain way or to bear certain costs (active obligation).

ACQUISITION OF PROPERTY

Real property can be acquired directly in the form of an asset deal or indirectly by acquiring the property owning company (share deal).

Asset deal

Under Austrian property law, the proper owner of real property must be registered with the Land Register. Therefore, the ownership of real property is not obtained by only signing the purchase contract, taking possession of the property and paying the purchase price. Furthermore, it is absolutely necessary to register the transfer of the ownership right in the Land Register. The direct acquisition of real property requires the conclusion of a notarized contract as well as registration of the new owner in the Land Register; registration of ownership represents the "*modus*" of the acquisition without which ownership of the real property cannot be obtained. The direct acquisition of real property triggers land transfer taxes (see below).

Share deal

The acquisition of real property via a share deal leads to "factual" universal succession, which secures for the acquirer all rights and obligations associated with the shares and guarantees a continuity of contracts related to the real property. Due to the lack of a new owner of the real property, no fees for registration in the Land Register are incurred. However, if the buyer or a group of companies within the meaning of Section 9 of the Corporation Tax Act (*Körperschaftsteuergesetz*) acquires in aggregate 95% or more of the shares of the company, the duty to pay land transfer tax is still triggered (see below).

Overview

ADVANTAGES

SHARE DEAL	ASSET DEAL
Indirect transfer of all rights and obligations (no acts of transfer needed in respect of individual assets such as real property)	Possibility of selling individual assets or companies or parts of companies
Target's losses carried forward remain utilizable (exception: purchase of shell companies)	Liabilities and obligations of the selling company will not transfer in course of real estate asset deals (exceptions may apply)
No problems with legal succession	
Possibility of avoiding real estate transfer tax under certain circumstances	

DISADVANTAGES

SHARE DEAL	ASSET DEAL
All liabilities and obligations remain with the company - no clean-up of legacy liabilities	Singular succession (transfer act needed for each asset)
Compliance with formal requirements	However, Section 38 of the Austrian Commercial Code (*UGB*): Transfer of all "company-related, and not personal" legal relationships to the purchaser - deviating agreement possible
No tax revaluation of the company's assets	No transfer of tax losses
No capitalization and depreciation of goodwill (Exception: limited possibility of depreciation within the scope of group taxation)	Fees and transaction taxes in connection with the transfer of certain assets (e.g. trademarks, contractual relationships)

DISADVANTAGES

SHARE DEAL	ASSET DEAL
Tax liability of the seller on capital gains	The seller realizes a taxable capital gain; in the case of a corporation selling the company, the seller may realize the gain again upon subsequent liquidation.

PURCHASE OF LAND BY FOREIGN NATIONALS

According to the land transfer legislation enacted by each Austrian federal state (*Bundesländer*), the transfer of real property to foreign legal entities and individuals (other than those of EU member states) and in some cases even the transfer of tenancy rights is generally subject to the prior consent of or notification to the respective land transfer authority of the relevant federal state. This restriction generally also applies to indirect acquisitions of real property (e.g. by way of a share deal) since the respective state legislation and administrative practice refers to the ultimate [beneficial] owner of legal entities for the purpose of assessing the nationality of the buying entity. As regards the indirect acquisition of property via a share deal, local legal principles vary: eg in the federal state of Tyrol the prior approval of the land transfer authority is mandatory, whereas in the federal state of Carinthia, such mandatory approval is not explicitly governed but needs to be assessed on a case by case basis, while in Vienna no approval is needed. However, EU citizens and entities may not be hindered from acquiring Austrian real property.

M&A INSURANCE

Transaction liability insurance aims to cover financial losses or liabilities arising from claims under the seller's indemnification covenants and from a breach of a seller's warranty obligations. The insured party can be either the seller, seeking insurance for possible buyer's claims arising from any breach by the seller of its indemnity or warranty obligations, or more commonly the buyer. In the latter case, the buyer can directly claim the amount to which it is entitled under the sale and purchase agreement from the insurer.

In recent years, international investors who are used to the system of title and transaction liability insurances have also been requesting such insurance coverage in Austria. Especially in cases of insolvency or distressed M&A transactions, such coverage is commonly required by clients. Thus, insurance providers in Austria are reacting to this development by widening their insurance product range and covering a broad spectrum of claims. Nonetheless, unlike in common law jurisdictions, in Austria title insurance is hardly used in real estate transactions. This is mainly due to the Austrian Land Register's "principle of registration", whereby (ownership) rights once registered in the Land Register can be relied on. This minimises the purchaser's possible risks of title defects and reduces the need for such insurance.

BUILDINGS ON THIRD PARTY LAND

Following the principle *superficies solo cedit*, the owner of a land plot is also the owner of the building erected thereon (principle of inseparability of ownership of land and building). However, there are two exceptions: the building right (*Baurecht*) and the superstructure (*Superädifikat*).

Building right (*Baurecht*)

The building right is the right to own a building on or under the ground surface of real property owned by a third party. The building right is established via a separate folio in the Land Register and is treated as an independent real property. The registration of the building right represents an encumbrance in the Land Register unit of the third party land. Accordingly, the building right "doubles" the surface of the respective land. Any construction or building erected on the building right is connected thereto as a non-independent part in line with the s*uperficies solo cedit* principle.

The building right can only be granted for a limited period, from a minimum of ten to a maximum of 100 years, and is usually granted for a recurring consideration. Unless otherwise agreed, at the end of the term any buildings erected on the building right are transferred to the owner of the third party real property in exchange for compensation amounting to a quarter of the residual value of the building.

Superstructure (*Superädifikat*)

One further exception from the principle of inseparability of ownership of land and buildings is the socalles superstructure (*Superädifikat*), which is built on third party real property and not intended to remain there for an indefinite period. Prior to the construction of the superstructure, the developer will have to enter into an agreement with the owner of the real property allowing him to own a building on the land for a limited period of time. The superstructure will not be registered in the Land Register; however, the agreement granting the right to own the superstructure has to be filed with the Land Register and a respective note will be registered in the Land Register folio of the real estate on which the superstructure is erected. When transferring ownership to a superstructure, such transfer has to be notified to the Land Register to become effective. As the legal framework of superstructures is partly based on case law, which in the past was also subject to change, banks are cautious financing superstructures.

LEASE OF REAL ESTATE

Austrian law recognizes different types of contracts permitting the use or tenancy of land, business premises and buildings.

Tenancy law is governed by the Austrian Civil Code (*ABGB*) and the Austrian Rental Act (*Mietrechtsgesetz, MRG*). In general, the Civil Code is applicable to any type of lease agreement (*Bestandvertrag*), whereas the Rental Act is in principle strictly applicable to tenancy agreements for "floor space" (*Mietverträge*) relating to residential and commercial premises.

However, there are also lease objects that fall partly under the Rental Act and partly under the Civil Code. Fixed-term lease agreements may also be registered in the Land Register, representing encumbrances in relation to the real property.

While the regime of the Civil Code provides great flexibility for the parties to agree on any terms and conditions, the Rental Act on the other hand is adjusted to protect the tenant and its vast number of mandatory provisions may not be altered in disadvantage to the tenant.

A specific type of lease agreement is the lease of business operations (*Unternehmenspachtvertrag*), where a going concern is subject to the lease. Basically, leases of business operations are not subject to the Rental Act. In general, the lease of business operations can be assumed if the lessor has an economic interest in an ongoing business undertaken by the lessee also in a wider context (e.g. if it is expressly agreed that a going concern must be handed back to the lessor after the expiry of the lease term or in the case of a shopping centre as a business operation on its own providing a certain range of retailers).

With respect to tenancy agreements in shopping centres for instance, industry practice is to conclude leases for business operations while the Austrian courts tend to qualify such lease agreements as leases of floor space, thus granting the lessees protection against termination of the lease without cause under the Rental Act. Nevertheless, this has to be assessed on a

case-by-case basis. The most important consequences of the application of the Rental Act are the landlord's restricted possibilities to terminate the lease agreement and the imposition of detailed requirements in respect of the basic features of the lease agreement (e.g. rent calculations, operating costs, maintenance and repair, term of the lease agreement, etc.).

Basically, lease law is one of the most complex fields of law in Austria with a highly political touch.

Operating costs

The operating costs of a building are the costs associated with the use and enjoyment of a building and its facilities. If the agreement is not governed by the Rental Act, these costs may be passed on to the tenants based on agreement between the parties, unless such agreement is grossly discriminatory, to be assessed on a case by case basis. In absence of such a contractual agreement, the landlord has to bear such costs. If the agreement falls under the full scope of application of the Rental Act, only specific, exhaustively listed costs in the Rental Act may be passed on to the tenant while the remainder represent owner's costs.

Maintenance and repair

Generally, the landlord is obliged to hand over the leased premises in a condition fit for use. The duty of maintenance is not only limited to the leased premises, but to the common parts of the building as well. In case of the application of the Rental Act, the costs borne by the owner for the general maintenance of the structure of the building and the common parts of the building (i.e. external walls, roof, staircase, etc.) may not be contractually passed on to the tenant, while this is possible outside of the scope of application of the Rental Act with specific agreement, but caution needs to be taken: if such agreement is grossly discriminatory, such agreement might be null and void.

Effects of a change of control

At the level of Lessee

In case of a change of ownership or control in the company which is a lessee, the respective landlord is – only in case the lease agreement is subject to the full scope of application of the Rental Act – entitled to increase the rent to an adequate level.

At the level of Owner

In case of a change of ownership in real estate, leases subject to the Rental Act are automatically passed on to the new owner, who is bound by all provisions of the lease. In case the lease is subject to the less strict Civil Code, the new owner is also bound by the lease, but in particular not to its provisions regarding termination of the lease. This means the new owner may terminate the lease in accordance with statutory notice periods. In order to avoid this consequence, a lease agreement has to be registered in the Land Register; in such a case the new owner is fully bound by all provisions of the lease agreement.

SHORT TERM LEASE OF REAL ESTATE - AIRBNB ET AL.

The Austrian legislation stipulates as a general rule that the short-term letting of apartments located in residential areas is permissible. There are however two main restrictions. First of all, short-term letting is limited to what is considered a "normal" level. This means that the lessor cannot provide ancillary services typically provided in relation to accommodation, such as cleaning or catering, because this activity would fall within the scope of commercial renting and an official trade licence would be required. Secondly, letting an apartment on a commercial basis can be prohibited under the terms of the condominium ownership agreement. This restriction can be lifted with the unanimous consent of all owners.

In addition to this general rule, the Viennese legislators clarified – as a reaction to the increasing popularity of short-term lets through online platforms in recent years – that the short-term commercial letting of an apartment does not usually take place in a residential area. The consequence of this clarification is that the letting of apartments on a commercial basis in residential areas is prohibited in Vienna. This *de facto* means that Airbnb lessors are limited to letting apartments on a non-commercial basis, e.g. letting only one apartment without providing any ancillary services.

Short Term Accommodation and alternative Temporary Living-Concepts

We are currently seeing a trend in Austria for alternative living concepts which represent a hybrid form between the long-term letting of apartments and short-term accommodation in hotels. Since these concepts combine elements of classical housing on the one hand and commercial accommodation on the other, the assessment of the applicability of legal regulations is always a question of the individual case.

The most important assessment criterion is the extent of the services offered: While the concept "Furnished Accommodation" offers partially furnished apartments without any service (designed for longer stays), the concepts "Serviced Accommodation" and "Serviced Apartments" offer hotel-like services, whereas the services offered for "Serviced Apartments" are more extensive.

The Rental Act and the Civil Code form the legal bases for "Furnished Accommodation". As soon as services typically provided by a hotel are offered, the trade law regulations, such as e.g. legal regulations on the minimum size of a residential unit can also play a role depending on the federal state, must be complied with. If the housing concept is geared towards students, senior citizens, etc., the Student Dormitories Act, the Housing and Nursing Home Act or any ordinances of the federal states may also apply.

PUBLIC PERMITS

In order to realise building projects, building and operational facility permits *(Bau- und Betriebsanlagengenehmigung*) have to be obtained from the respective authorities. In the case of shopping centres, general approval to operate a shopping centre has to be obtained under the Trade Regulation Act (*Gewerbeordnung*) in order to evaluate the impact such a facility

might have on the environment. After the facility in general is approved, each shopkeeper has to obtain a special operational facility permit with respect to the operation of his/her business within the shopping centre.

According to the Environmental Impact Assessment Code (*Umweltverträglichkeitsprüfungsgesetz*), construction projects of a certain size are subject to a unified review process, which covers all other administrative requirements (i.e. building and operational facility permits) in relation to the construction of the envisaged construction project.

TAXES AND FEES

Acquisition of land and buildings

The acquisition of real property in Austria is subject to real estate transfer tax (RETT) (*Grunderwerbsteuer*), which is not merely limited to "land", but also includes the buildings erected on it.

In general, the calculation basis for the RETT is the value of the consideration (typically the purchase price) or the real property value (*Grundstückswert*), whichever is higher. The real property value is assessed as follows:

- aggregate of the threefold of the tax value of the land plus the value of the building; or
- value to be derived from a suitable real property price index (e.g. eligible indices); or
- the lower fair value of the transferred real property (e.g. determined by expert valuation).

The real property value also serves as the calculation basis for real property acquisition without remuneration (e.g. by way of donation, transfer by way of reorganisation of a company (*Umgründung*), etc.). The transfer of real property to close family members is qualified by law as being conducted without remuneration. RETT is also applicable if 95% of the shares in a company, which owns real property, are acquired by a single purchaser or a group of companies within the meaning of Section 9 of the Corporation Tax Act *(Körperschaftsteuergesetz)*.

The tax value (*Einheitswert*) of the real property – a value established by tax authorities for taxation purposes which usually lies far below the actual value of the real property – serves as the calculation basis for the RETT in case of the acquisition of agricultural real property (i) by way of reorganisation of businesses (*Umgründungen*), (ii) acquisition of at least 95% of the shares in a company owning such agricultural real property, and (iii) acquisition by close family members.

The general tax rate amounts to 3.5% of the relevant calculation basis. In the case of acquisition without remuneration, the tax rate amounts to 0.5% for the first EUR 250,000 of the real property value, 2% for the next EUR 150,000 and 3.5% for any amount over and above this sum.

In the case of the transfer of agricultural real property to close family members, RETT will amount to 2% of the applicable tax value.

In the case of a transfer of non-agricultural real property by way of reorganisation of a business (*Umgründung*) or acquisition of 95% or more of all shares in a company owning real property (share deal), a privileged tax rate of 0.5% of the respective real property value applies. A respective transfer of agricultural real property is taxed at a rate of 3.5% of the applicable tax value.

The registration fee for registering the change of ownership in the Land Register amounts to 1.1% of the value of the land, which does not necessarily need to correspond to the purchase price. This fee only applies in case of an asset deal since the Land Register needs to be updated only in such case (in case of a share deal, the entry in the Land Register would not change). Transactions regarding the acquisition of real property are exempt from VAT but the parties may opt to add VAT to the purchase price. The VAT rate is 20%.

Owning land

Owning land is also subject to real property tax (*Grundsteuer*). The base rate for real property tax is ~2‰ (two-tenths of a percent) of the tax value (*Einheitswert*) of the land per year (with regard to agricultural land, a tax rate of 1.6‰ up to a tax value of EUR 3,650 applies). The real property tax is levied by the Austrian municipalities, which may increase the base rate by a maximum of 500%, i.e. the maximum rate can be 1% per annum of the tax value.

Encumbrances

The registration fee for registering a mortgage in the Land Register amounts to 1.2% of the secured (maximum) amount stated in the mortgage. This fee also applies in case of a change of the mortgagee.

Lease agreement

According to the Austrian Stamp Duties Act, certain legal transactions are subject to stamp duty (*Rechtsgeschäftsgebühren*), such as any type of lease agreement for commercial premises (stamp duty for residential apartments has been abolished). The basis for determination of stamp duty for tenancy or lease agreements is calculated in accordance with the amount of the rent and term of the tenancy relationship. In the case of a fixed term, the stamp duty amounts to 1% of the gross annual rent multiplied by the amount of years up to the maximum of 18 years (for commercial leases). In the case of an indefinite term, the stamp duty amounts to 1% of the threefold of the gross annual rent. In contrast to tenancy agreements, real property purchase agreements do not incur stamp duties.

Sale of real property by private individuals

Profits from the sale of real property by individuals will be taxed at a flat rate of 30% if the real estate sold was acquired after 31 March 2002 (new properties) and at a tax rate of 4.2% if the real estate was acquired before 31 March 2002 (old properties). Under special circumstances, old properties may be subject to a tax rate of 18%. In certain cases real property acquired after 31 March 1997 are also treated as new real property.

The base for the tax assessment is the sales margin (i.e. sales price minus acquisition costs [including lawyer's fees]).

Real property sales remain exempt from taxation if (i) the building was used as the seller's principal residence for at least two years since the acquisition or five years within the last 10 years before the sale, (ii) the building was self-constructed by the seller, or (iii) the building was expropriated.

For the avoidance of doubt, the profits from real estate sales by companies are subject ordinary taxation.

OVERVIEW ON FEES AND TAXES

TAXES AND FEES	RATE
RETT (real estate transfer tax)	In principle, 3.5% of consideration or real property value, whichever is higher; 0.5% in case of share deal.
Registration of ownership	1.1% of value of land
VAT (opting-in)	20% of consideration
Registration of mortgage	1.2% of stated amount
Real Property Tax	2‰–1% of the tax value
Stamp Duty for Lease Agreements	1% of the gross annual rent, multiplied by the number of years up to the maximum of 18 years for commercial leases; residential leases are exempt from stamp duty; in case of leases with an indefinite term, 1% of the threefold of the gross annual rent

ENVIRONMENTAL LIABILITY

In keeping with the "polluter pays principle", the polluter is liable and subject to an obligation to carry out decontamination and remediation measures under the relevant Austrian regulatory law provisions (in particular, the Austrian Waste Management Act (*Abfallwirtschaftsgesetz*) and the Austrian Water Law Act (*Wasserrechtsgesetz*)). Austrian law also provides for subsidiary liabilities of (i) the owner of real property and (ii) the purchaser of the relevant real property. The owner of the real property is in general liable on condition that he agreed or voluntarily tolerated pollution, dangerous circumstances or measures and neglected to implement appropriate measures to prevent pollution and/or contamination occurring.

The purchaser of real property may become liable if he knew or should have known (but did not due to his own negligence) of the pollution or of the respective dangerous facility or measures. The Austrian Environment Agency (*Umweltbundesamt*) runs two databases ("Index of Areas with Known Pollution" [*Altlastenatlas*] and "Index of Areas Suspected of Being Polluted" [*Verdachtflächenkataster*]), which contain information on those real properties known or suspected to be contaminated; however, it should be noted that these databases are not comprehensive and are only indicative.

COVID-19 REGULATIONS WITH RESPECT TO REAL ESTATE

Austrian laws include an Epidemic Act (*Epidemiegesetz 1950*) specifically regulating epidemics. However, during the COVID-19 pandemic, the Austrian legislator issued numerous special COVID-19 laws and ordinances, which in addition to the Epidemic Act specifically provide for measures with the aim to lower the spread of the Corona-Virus. The most drastic measures relate to the closure of businesses, schools etc by way of lock-downs. As of May 31, 2021, Austria experienced four general lock-downs, the last one ending on 19 May 2021.

During the lock-downs, mainly five categories of business have been affected to a different level: while critical infrastructure such as food retailers, banks, pharmacies or telecom providers etc were/are hardly limited in their operations during lock-downs, the event and touristic industry is in lock-down nearly since March 2020 (with a short break over the summer for the tourist industry); also personal services, where a close contact to costumers is inevitable, were impacted by lock-downs; further, restaurants were affected by limitations to open. Finally, general retailers had a little bit more time during the last year to open their business. But overall, except for the food retail industry, nearly any industry has been hit hard, like in many other countries. On the contrary, office premises up to now have not been subject to any lock-down measures forcing offices to close on a general level.

The lock-downs naturally raised the question, whether rent is payable by such business operations, which were/are struck by business closures. As no specific laws or ordinances with a view to payment of rent has been enacted as a consequence of the COVID-19 pandemic, one had to revert to provisions of the Austrian Civil Code. The Austrian Civil Code in fact provides for a right of the tenant to reduce the rent (at maximum to zero) to the extent the leased object could not be used due to - inter alia - a plague. Still, as no decisions of the Supreme Court are existing in this regard, many questions arise. For instance, it is still in discussion in literature, whether the plague itself has to affect the leased object (ie in the sense of a contamination) for the application of said provision or whether it is sufficient that a law or ordinance enacted due to the plague prohibits the use of the leased object. It is also open, whether certain activities by the tenant (such as using the leased object for storing purposes or as delivery point of online-shops) could lead to residual use of the leased object. But it should be noted, that while lower instances have decided in favour of the tenants, there are no Supreme Court Judgements so far. The matter is highly controversial, and just recently, doctrine was more balanced. In our opinion, COVID-19 stems from a neutral sphere, and the risk must be shared between landlord and tenant. Not any and all consequences fall into the landlord's risk. Further, the question, whether state aid received by tenants should be taken into account with respect to tenant's claim for rent deductions, is still open and would be justified from our perspective. As an ultimate solution, in our view both parties could also have the right to terminate the lease agreement for change of circumstances. We expect a more detailed debate on the legal issues once such a case is brought to the Supreme Court.

Notwithstanding the aforementioned measures, tenants of commercial premises and tenants in lease agreements of business operations also have the possibility to apply for various state aids granted by the Austrian government due to the COVID-19 pandemic, e.g. the subsidy for fixed costs (*Fixkostenzuschuss*), such as rents. Also in this regard it is discussed, whether any state aid received by tenants would result in an obligation to pay the rent.

With respect to leases of residential premises, the following COVID-19 related regulations for relief have been issued during the COVID-19 pandemic:

Prohibition of termination by the landlord on the basis of rent arrears until 1 July 2022, if the economic performance of the tenant has been significantly impaired by the pandemic and therefore the tenant was unable to pay the rent in the period between 1 April 2020 and 30 June 2020.

Rent arrears occurring between 1 April 2020 and 30 June 2020 can only be enforced in court from 1 January 2021 onwards. However, for reasons other than rent arrears, and for rent arrears outside this three months period, the tenant may still be terminated.

Contrary to the legal regulation of the Austrian Rent Act, the COVID-19 measures provide for the possibility of a short-term extension of fixed-term rent agreements until 31 December 2020, which would otherwise be illegal due to restrictions on the minimum term for fixed-term rent agreements.

****The information contained in this overview represents a condensed overview of certain matters of real property law in Austria, is of a general nature, does not purport to be comprehensive or conclusive and does not constitute legal advice. CERHA HEMPEL Rechtsanwälte GmbH does not assume any liability whatsoever for the correctness or completeness of this overview. It is recommended that you seek professional legal advice prior to any business transactions involving real property.****

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Belarus

Real Estate Law in Belarus

THE LAND REGISTER

Rights with respect to real property, such as ownership, mortgages, easements, etc., as well as transactions with respect to land plots and buildings are recorded in the "Unified State Register of Real Estate, Rights Thereto and Transactions Therewith" (the "Land Register"), which is administered by the State Republican Research and Production Unitary Enterprise "National Cadastral Agency". Each real property has its own unique cadastral number in the Land Register.

The "principle of registration" is the basic principle underlying the Land Register, which means that (i) the creation of real property becomes legally recognized, (ii) transactions in real property come into force, and (iii) the acquisition, transfer, limitation and suspension of rights concerning real property become effective only upon registration in the Land Register. A transaction regarding real estate is not deemed to have been officially concluded between the parties unless it is registered in the Land Register. The only parties' obligation arising from such an unregistered contract is the obligation to register it. A court has the right to issue a decision concerning registration of the transaction if one of the parties has purposefully failed to do so.

The Land Register is open to the public. Everybody has the right of access to the register and to obtain extracts from it. The information provided includes not only details regarding a particular object of real estate but also details of the owner and information about any Encumbrances regarding the object as well as information regarding the holders of these Encumbrances. However, it is impossible to obtain a list of all objects of real estate belonging to a particular individual or a company as access to such data is provided only to the title holders, their successors, and government authorities. All registrations in the Land Register are made in a ranking order (defining the priority of rights) on a first come, first served basis.

RESTITUTION

Restitution of real estate, as a general legal concept, is possible in Belarus. In particular, it may be applied in a situation where an owner has lost its real estate as a result of fraud or invalid transaction. At the same time, in Belarus there is no legal basis for restitution of real property lost as a result of seizure by the German authorities during World War II or by the Soviet authorities during the period from 1917 to 1991.

ENCUMBRANCES

The most relevant encumbrances in relation to real property are mortgages, easements (servitudes) and restrictions on the sale of historic buildings.

Mortgages

A mortgage is a right of lien against a property. A right of lien is the right granted to the creditor to obtain satisfaction from a specific property if the debtor does not pay the debt as agreed. If the mortgagor does not fulfil its obligations, the mortgagee has the right to initiate legal enforcement proceedings and to recover the outstanding liabilities from the proceeds. In this case, the property is sold at auction and the creditor recovers the debt from the money received in the course of such a sale. Obtaining ownership of the real property directly by the creditor based on a mortgage (*lex commissoria*) is impossible unless the property has not been sold in the course of two subsequent auctions.

Easements (servitudes)

Easements (servitudes) limit the specific rights to third party property. In Belarus, all easements are "property easements", which grant the respective owner of the "dominant" property certain rights over the "servient" property. A typical example of an easement (servitude) is the right to cross the servient property in order to access the dominant property (right of way). The easement (servitude) is strictly connected to the real property and is preserved in the event that the rights to such real property are transferred to another person.

ACQUISITION OF PROPERTY

The acquisition of property is possible in the form of a share deal, by acquiring the property-owning company, or in the form of an asset deal, by acquiring the concerned property directly.

Asset Deal

The direct acquisition of real property requires the conclusion of a written contract as well as registration of such contract and registration of transfer of rights over the land plot in the Land Register. The registration of ownership represents the "*modus*" of the acquisition without which ownership of the property cannot be obtained.

Share Deal

An acquisition of property via a share deal leads to "factual" universal succession, which secures for the acquirer all rights and duties associated with the shares and guarantees a continuity of contracts related to the property. Due to the lack of a new owner of the property, no fees are incurred for registration in the Land Register.

Overview

ADVANTAGES	
TAXES AND FEES	**RATE**
No problems with legal succession	The only purchase possibility in certain cases, e.g. insolvency
Indirect transfer of all rights and obligations (no acts of transfer needed in respect of individual assets)	Possibility of selling individual assets or companies or parts of companies to debt-free rescue companies
No fees for the registration of every single transfer	Liabilities and obligations will not transfer

DISADVANTAGES	
TAXES AND FEES	**RATE**
All liabilities and obligations remain with the company - no clean-up of legacy liabilities	Singular succession (transfer act needed for each asset)
Compliance with formal requirements	Non-transferable rights: e.g. permits and licenses under public law (if those are not rights in rem)

DISADVANTAGES	
TAXES AND FEES	**RATE**
May require approval from the antimonopoly authority	No transfer of tax losses
Risk of rescission in the event of the seller's insolvency	Risk of rescission in the event of the seller's insolvency

M&A INSURANCE

Transaction liability insurance aims to cover financial losses or liabilities arising from claims under the seller's indemnification covenants and from a breach of a seller's warranty obligations. The insured party can be either the seller, seeking insurance for possible buyer's claims arising from any breach by the seller of its indemnity or warranty obligations, or more commonly the buyer. In the latter case, the buyer can directly claim the amount to which it is entitled under the sale and purchase agreement.

Transaction liability insurance with respect to real estate deals is not mandatory in Belarus. It can be used at the discretion of a party to a relevant deal.

LAND PURCHASE BY FOREIGN NATIONALS

Belarusian law provides that foreign companies may only lease land in Belarus for a period of up to 99 years. Exceptions apply to foreign companies that may temporarily use land (that's a separate kind of land property right different from lease of land) in accordance with concession agreements (for a period of up to 99 years). However, Belarusian companies founded by foreign companies or individuals have equal rights with regular domestic companies with respect to the acquisition of land and may freely purchase land through an auction or on the basis of a resolution of the President of the Republic of Belarus.

BUILDINGS ON THIRD PARTY LAND

In Belarus it is possible (and usual) to erect buildings on a land plot which is not owned by the owner of that building. In particular, the land may be used on the basis of other available rights, e.g. right of permanent use or lease. It is usual to be an owner of a building erected on state-owned land. As a general rule, the sale of a land plot and a building erected on this land plot must be performed simultaneously if both the land and the building are owned by the same owner. If the owner of the building and the owner of the land plot are different entities/persons, the buyer of the building will obtain the same rights to the land plot as the rights of the seller, e.g. the right of permanent/temporary use or the right of lease. In such event, the relevant rights to the land plot are obtained by the buyer simultaneously upon registration of title to the building.

LEASE OF REAL ESTATE

As a rule, lease agreements in Belarus should be concluded for a limited term, although lease agreements for an indefinite term are also possible. In general, Belarusian law provides for protection of lessees. It provides, for example, for limits on maximum rent rates with respect to state-owned real estate. With a few exceptions, a landlord cannot terminate a lease agreement until expiration of its term. However, lease agreements, which are concluded for an indefinite period, can be terminated by giving relatively short prior notice (three months as a default rule).

Lease agreements, which include an option to purchase the object of the lease, are unusual in Belarus; however, the inclusion of such an option into a lease agreement is possible under Belarusian law.

As a general rule, a lessee is responsible for the leased building, which results in liability to bear all costs for its day-to-day maintenance. On the other hand, a lessor is responsible for capital repair of the leased building. However, parties to a lease agreement are free to agree on any other distribution of costs between them.

In comparison to other relevant contracts, lease contracts are not subject to registration with the Land Register except for the contracts on the lease of a land plot.

SHORT TERM LEASE OF REAL ESTATE - AIRBNB ET AL.

As a general rule, the short-term letting of residential premises is permissible. It can be exercised either as a business activity or as a private activity of the natural person owning the premises. In the latter case, such activities are not considered an entrepreneurship. The short-term lease may not provide for additional services. Otherwise, it would be considered similar to hotel services, which are subject to a number of requirements.

PUBLIC PERMITS

In order to realise building projects, permits for construction must be obtained from local authorities. Moreover, upon receipt of such a permit and following approval of the design documentation, a company must also obtain a permit allowing it to carry out the intended work from the Department for Control and Supervision of Construction. However, there are some exceptions from the general rules with respect to construction of buildings in the territory of the "Great Stone" Chinese-Belarusian Industrial Park.

Upon completion of the construction, the newly erected building and right of ownership over it have to be registered in the Land Register.

TAXES AND FEES

Land tax

In Belarus, companies and individuals possessing land plots based on the right of ownership, right of permanent use, right of temporary use or right of inherited estate for life have to pay land tax.

The tax base may depend on the type of the land (lands for construction, agricultural lands, lands of the cities, etc.) or cadastral value of the relevant land plot. If the tax base is calculated depending on the type

of the land, then the tax rate may vary from approx. EUR 0.02 per hectare to EUR 55 per hectare or even more. If the tax base is calculated depending on the cadastral value of the land plot, then the tax rate may vary from 0.025% to 3% of the cadastral value of the land plot.

Besides, the amount of tax rate may be increased or decreased up to two times upon resolution of the local authorities.

Building tax

Domestic companies must pay real property tax if they own buildings in Belarus. Individuals and foreign companies also pay this tax unless they let the premises under a lease to a domestic company. In the latter case, the lessee is obliged to pay the building tax. The annual tax rate varies from 0.1% to 1% of the value of the building for companies and from 0.1% to 0.2% for individuals.

In addition, the tax rates may be increased or decreased up to two times upon resolution of the local authorities.

There is no real estate transfer tax in Belarus. However, VAT at the rate of 20% applies if a company sells real property, provided the company is the payer of VAT. At the same time, VAT is not applied if the building is sold by an individual or the company which is not the payer of VAT. In addition, the parties to an agreement (sale/purchase contract, mortgage contract, etc.) have to pay a fee for registration of the relevant agreements and transfer of rights in the Land Register. The amount of the fee depends on the type of registered right or transaction and varies from 0.1 basic value (approx. EUR 1) to 25 basic values (approx. EUR 250) or more.

OVERVIEW ON FEES AND TAXES

TAXES AND FEES	RATE
RETT (real estate transfer tax)	n/a
Fee for registration of ownership	depends on type and legal basis for ownership and varies from 0.1 basic value (approx. EUR 1) to 3.2 basic value (approx. EUR 32) or more
VAT	depends on type of seller, tax rate is 20% of the contract value for companies which are payers of VAT. For individuals and companies which are not payers of VAT, VAT do not apply
Fee for registration of mortgage	5 basic values (approx. EUR 50) or more
Building Tax	0.1% - 2.0% for companies, 0.1% - 0.4% for individuals
Land Tax	EUR 0.02 - 55 per hectare for the agricultural land and the land of forestry fund; 0.025 - 3% of the cadastral value of the land plot for the other types of land.

ENVIRONMENTAL LIABILITY

As a general rule, the owner of the land is required to prevent the land plot he/she is in possession of from being polluted. If a company is using a land plot and such usage may pollute it, the company must implement measures preventing pollution in accordance with plans approved by the Ministry of Natural Resources and Environmental Protection of the Republic of Belarus. Moreover, the landowner should ensure that the amount of harmful substances emitted will not exceed the limits prescribed by the law.

COVID-19 REGULATIONS WITH RESPECT TO REAL ESTATE

Although Belarus did not introduce vast array of COVID-19 related measures, some palliative steps were nevertheless taken to minimize the impact of the pandemic.

For example, the local authorities have been granted the right to extend the deadline for payment of building tax and land tax until 31 December 2020. The payment of such taxes is normally due from 1 April 2020 to 30 September 2020.

Other measures were also temporary and had already expired by the end of 2020.

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Bulgaria

Real Estate Law in Bulgaria

THE LAND REGISTER

Real property rights, such as ownership limited property rights, mortgages, easements and other rights, are registered in the Land Register, which is administered by the Registry Agency. According to the Cadastre and Land Register Act, the Land Register is connected with the Cadastre, with each real property identified through its unique cadastre number (Identifier). Currently, the two registers (property and cadastre) are not fully integrated, since not all of the territory of Bulgaria is covered by the Cadastre yet. The approval of cadastre maps has been completed with respect to approximately 96% of the territory, with the remaining territories expected to be completed over the next few years.

The "principle of registration" is the basic principle underlying the Land Register. This means that the acquisition, transfer, limitation, modification and suspension of rights concerning real property can only be effected by registration in the Land Register. A legal transaction has no effect vis-à-vis third parties unless it is registered in the Land Register.

The Land Register is open to the public. Everybody has the right to access the register and to obtain extracts from it. Everybody may rely on the assumption that the Land Register contains accurate and complete information relating to all rights and obligations with respect to real property.

Registrations are registered in the Land Register in a ranking order (defining the priority of rights) on a first come, first served basis.

Restitution

Under Bulgarian law, restitution means the restoration of real property to the previous owners (or their inheritors), from which it was expropriated during the former regime (1944-1989). The legislation on restitution, adopted in the early 1990s, comprises a great number of acts, each of which has a specific scope and particular provisions. Generally, the restitution acts introduce two methods of restoration of ownership rights. According to some of the legislative acts, restitution occurs by operation of law (ex lege) upon the entry-into-force of the respective act. Other restitution acts provide for a specific administrative or court procedure as a condition for ownership to be restored.

At present, the restitution process is to a great extent completed and related risks could be deemed considerably mitigated. The restitution laws were adopted more than twenty years ago and therefore it is very unlikely that a new, unidentified restitution claim is submitted for the first time at present. Where restitution occurs by operation of law, claims still pending are typically subject to court proceedings (the court claims related to real rights are registered in the Land Register and therefore easily identifiable). Further, the statutory terms for submitting restitution claims, provided by many of the restitution acts, have expired.

ENCUMBRANCES

The most important encumbrances in relation to real property are mortgages, injunctions, court claims, pledges and easements. After their registration in the Land Register, encumbrances are binding on any third party according to the order of registration.

Mortgages and pledges

Under Bulgarian law, a mortgage is valid for ten years as of the date of registration in the Land Register. However, the mortgage can be renewed before the expiry of the above term, at the sole request of the creditor. Pledges are typically used with respect to movables. However, it could also affect real properties in case if the pledge is established over a going concern which includes real property. The validity of the pledge is five years as of registration in the Commercial Register, but it can be renewed before the expiry of this term.

Easements

Easements can be either contractual (established by the owner of a property in favour of a third person), or statutory (existing by operation of law in favour of certain beneficiaries, e.g. utility companies). Both types of easement create certain obligations for the owner of the encumbered property (servient property) vis-à-vis the holder of the easement.

Injunctions

Injunctions are used to secure receivables under a court claim or enforcement. The registration of a court claim related to real property rights has a similar function.

ACQUISITION OF PROPERTY

Asset deal

Any acts transferring ownership rights (such as sale and purchase agreements, exchange, donation, etc.) have to be executed in the form of a notarial deed and registered in the Land Register. Certain contracts (such as voluntary partition agreements) must be notarized.

Share deal

By acquiring a company (owner of a real property), the purchaser indirectly acquires its assets. Usually this is more favourable from a tax perspective, since no real estate transfer taxes are incurred. This scheme is appropriate where the respective company (such as an SPV) holds only the target asset and its related contracts. Property acquisition can also be achieved through some types of corporate transformations (mergers, spin-offs, etc.).

Overview

ADVANTAGES	
SHARE DEAL	**ASSET DEAL**
No problems with legal succession	The only purchase possibility in certain cases, e.g. insolvency
Indirect transfer of all rights and obligations (no acts of transfer needed in respect of individual assets)	Possibility of selling individual assets or companies or parts of companies to debt-free rescue companies
No real estate transfer tax	Liabilities and obligations will not transfer

DISADVANTAGES	
SHARE DEAL	**ASSET DEAL**
All liabilities and obligations remain with the company - no clean-up of legacy liabilities	Singular succession (transfer act needed for each asset)
Compliance with formal requirements	Non-transferable rights: e.g. permits and licenses under public law (if those are not rights in rem)
Risk of rescission in the event of the seller's insolvency	Legal transition of certain contracts (under labour law, tenancy law, insurance law)
	Risk of rescission in the event of the seller's insolvency
	Accrual of real estate transfer tax

M&A INSURANCE

Transaction liability insurance aims to cover financial losses or liabilities arising from claims under the seller's indemnification covenants and from a breach of a seller's warranty obligations. The insured party can be either the seller, seeking insurance for possible buyer's claims arising from any breach by the seller of its indemnity or warranty obligations, or more commonly the buyer, seeking insurance for its potential claims against the seller.

In Bulgaria, transaction liability insurance and title insurance are not common. Bulgarian insurance companies have not developed such insurance products as there appears to be little demand for them on the market. Occasionally, larger foreign investors who wish to cover the risk of title defects in real estate acquisitions would generally use the services of international insurers operating in Bulgaria on the basis of the freedom to provide services within the European Union.

LAND PURCHASE BY FOREIGN NATIONALS AND LEGAL ENTITIES

The basic principle laid down in the Bulgarian Constitution and the Ownership Act is that foreign individuals and foreign legal entities can acquire ownership rights to real property by virtue of an international treaty ratified by Bulgaria, as well as through legal succession. EU citizens and legal entities domiciled in the EU (as well as citizens and entities of the European Economic Area) are entitled to acquire title to land under the terms arising from the accession of Bulgaria to the EU.

The Ownership Act further stipulates that foreign citizens and foreign legal entities can acquire ownership of buildings and other limited property rights, unless otherwise provided by law.

The above rules apply to direct acquisition. With respect to indirect acquisition of property via, for instance, a share deal, no restrictions are applicable with the exception of certain limitations in force regarding agricultural and forest land. According to the Agricultural Land Ownership and Use Act, agricultural land cannot be acquired by companies where the shareholders are offshore companies or foreign individuals/foreign legal entities (other than from EU member states), and also cannot be acquired by joint stock companies which have issued bearer

shares. Similar restrictions are provided in the Offshore Companies Act in relation to forest land.

BUILDINGS ON THIRD PARTY LAND – LIMITED PROPERTY RIGHTS

The most common limited property rights are the right to build (on third party land) and the right of use.

The right to build

The right to build (superficies right) is established by the owner of a land plot in favour of a third person. Under Bulgarian law, this right lapses in favour of the land owner if it is not exercised (i.e. if the construction is not completed) within five years. The right to build can be established either for an indefinite period of time or for a certain period. In the latter case, the ownership of the building is automatically transferred back to the land owner upon expiry of the stipulated period.

The right of use

The right of use is a specific real property right which is limited compared to ownership and wider than a lease right. The right of use is always personal, which means that it cannot be further transferred to subsequent acquirers. The right of use includes the right to use the property in accordance with its purpose and the right to the benefits thereof. If it is not created for a shorter period, the right of use created in favour of a legal entity is terminated upon its winding-up.

LEASE OF REAL PROPERTY

Under Bulgarian law, lease agreements with respect to real property with a term exceeding one year have to be registered in the Land Register. Otherwise, such contracts will not be binding upon subsequent acquirers of the property. Both residential and commercial leases are governed by the Obligations and Contracts Act. A lease contract cannot be concluded for a term longer than ten years unless the contract constitutes a commercial transaction. There is no time limitation in the latter case.

According to the law, the tenant may sublease the leased property without the consent of the landlord, unless otherwise agreed in the contract.

Most of the provisions in the Obligations and Contracts Act related to leases are not imperative, therefore the parties are allowed to stipulate various arrangements regarding operating costs, property modifications, termination, etc.

Operating costs and costs for maintenance and repair may be passed on to the tenants based on an agreement between the parties. In the absence of such an agreement, the tenant only has to bear costs related to the normal use of the leased premises.

SHORT-TERM LEASE OF REAL ESTATE. SHORT-TERM ACCOMMODATIONS VIA ELECTRONIC PLATFORMS.

According to the judgment of the ECJ in case C-390/18 (Airbnb Ireland), an intermediation service which, by means of an electronic platform, is intended to connect potential guests with professional or non-professional hosts offering short-term accommodation, while also providing a certain number of services ancillary to that intermediation service, must be classified as an information society service, and as such should not be subject to licencing or similar onerous regulations.

The Bulgarian Tourism Act provides certain obligations in relation to short-term leases (accommodations) via electronic platforms. The online operators (connecting tourists and property owners) are required to ensure that the properties available on their platforms are categorized or registered. Non-compliance with this obligation can result in the platform operators being fined up to EUR 5,000 and the platform can be temporarily shut down by a court order.

On the side of the lessors, besides the requirement for categorisation/registration of the involved properties, it may also be relevant whether the activity is occasional or carried out on a regular/commercial basis, as well as whether hotel-type services are provided (such as cleaning or room service).

PUBLIC PERMITS

Property development is regulated in detail in the Bulgarian Territory Development Act. The basic principle is that construction can only be performed in accordance with an effective zoning plan approved in relation to the respective land plot. Zoning plans specify the property development options and characteristics of permitted construction activities.

In order to realise a building project, the investor needs to obtain approved project designs and a construction permit. The construction permit is issued by the chief architect of the respective municipality on the basis of the approved project designs.

Upon completion of the construction works, the investor needs to obtain an operation certificate from the chief architect of the respective municipality. Some types of construction site require a permit issued by the construction authorities.

TAXES AND FEES

The direct acquisition of real property, as well as limited property rights, is subject to real estate transfer tax. The tax rate is individually defined for each municipality by the municipal council and may vary between 0.1 and 3% of the purchase price or the tax value of the property (whichever is higher).

A registration fee of 0.1% and notary fees capped at approximately EUR 3,000 are also due upon registration of the transfer of the real property in the Land Register. No real estate transfer tax is due in the event of a share deal or if the property is transferred to a company's capital as a contribution in kind. The same applies to acquisitions as a result of corporate transformations (merger, spin-off, etc.).

Registration of a mortgage is subject to a 0.1% registration fee and notary fees capped at approximately EUR 3,000.

The transfer of urbanized land (regulated land plots) and new buildings (60 month or less as from the date of issuance of the use permit) are subject to VAT. VAT exemption applies to the transfer of buildings which are not new, as well as the transfer of parts of urbanized land which are adjacent to such buildings (the adjacent area is defined as the built-up area of the construction and a buffer of three-metres around the building), the transfer of non-urbanized land, and the letting of buildings to individuals for residential purposes. In the above cases, the parties have the option of making the transaction subject to VAT. The VAT rate is 20%.

OVERVIEW ON FEES AND TAXES

TAXES AND FEES	RATE
RETT (real estate transfer tax)	0.1 – 3% of the purchase price or the tax value, whichever is higher
Registration of ownership	0.1% of consideration or tax value
VAT	20% of consideration
Registration of mortgage	0.1% of consideration
Real Property Tax	0.1‰ – 4.5‰ of the tax value

ENVIRONMENTAL LIABILITY

The most important Bulgarian laws imposing certain obligations on landowners or developers are the Environment Protection Act and the Waste Management Act. Environmental and ecological issues often arise with respect to property development. Certain zoning plans and investment projects are subject to specific ecological and/or environmental impact assessments. Further, construction development in protected areas (such as Natura 2000 protected areas, which cover over 30% of the territory of Bulgaria) are also subject to ecological compliance assessments. The environmental authorities are entitled to evaluate the investment projects in terms of their potential negative impact on the relevant natural habitat or species subject to protection within the respective area, and further impose certain restrictions on the projects.

An environmental assessment is usually required upon transformation of agricultural or forestry land into building land (which is often the case with development in mountain/seaside resorts and renewable energy projects). Environmental liability and obligation to initiate decontamination measures, related to pollution, are provided in the Waste Management Act and the Soils Act.

COVID-19 REGULATIONS WITH RESPECT TO REAL ESTATE

The COVID-19 outbreak and the measures introduced by the authorities to prevent the pandemic spread have had a significant negative effect on the real estate business. Certain real estate companies were forced to close their operations temporarily, and many have suffered a decrease in revenues. During the state of emergency in Bulgaria, which was in force between 13 March and 13 May 2020, certain types of commercial sites, including large shopping malls, were closed. With respect to other sites (like entertainment and gaming halls, nightclubs, indoor areas of coffee shops) the restrictions remained in force for additional periods following the state of emergency. Other measures include suspended deadlines for pending court and enforcement proceedings, as well as seizures (public auctions) of real properties. As a result of the measures imposed by the authorities, certain contracts were directly affected. For instance, as some landlords were unable to perform their obligations (e.g. to provide the closed premises to tenants), this (depending also on the specific contract clauses) normally affects tenants' obligation to pay the rent, since they are prevented from operating the leased stores. As the COVID-19 crisis (and the measures taken by the authorities) constitutes an unforeseen event, force majeure and hardship clauses may also be applicable depending on the context.

Real estate financing was also affected. According to the Measures and Actions in the State of Emergency Act, the consequences of late payment under financing arrangements (such as loan agreements, lease agreements, factoring agreements and similar), granted by banks or other financial institutions, did not apply during the state of emergency period. No penalty interest and liquidated damages applied in such cases and obligations could not be called early before maturity. In addition, the respective contracts could not be terminated due to non-performance and properties cannot be seized. Similar rules applied for additional periods with respect to financing granted by financing institutions other than banks. In addition, the central bank has approved rules proposed by the commercial banks on deferral and settlement of credit facilities. Based on these rules, borrowers can apply for restructuring and deferring their debts until the end of March 2021.

Real estate businesses can also benefit from various financial support packages introduced by the authorities, such as the so-called 60/40 program, under which eligible companies can receive financial support amounting to 60% of their affected employees' salaries. Affected companies can also apply for financing under the loan program of the Bulgarian Development Bank, which allows certain businesses to apply for preferential loans and enjoy various grace periods.

BULGARIA

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Czech Republic

Real Estate Law in the Czech Republic

GENERAL OVERVIEW

Czech private law was substantially changed by virtue of the so-called "New" Civil Code and related legislation such as the Business Corporations Act, the Act on Private International Law and the Land Register Act, which became effective on 1 January 2014 and brought about the biggest legal change for Czech private law in twenty years. The New Civil Code and its principles significantly affected real estate law, and the aim of this overview is to take a closer look at some of the most crucial changes related to real property, its transfer and encumbrance.

THE LAND REGISTER

The Czech Land Register is a public register, which is also freely accessible. There is a new principle of publicity in Czech law effective as of 1 January 2014 under which any right to real estate (right in rem, in Czech "*věcné právo*") registered in the Land Register is effective towards all third parties, and if such a right in rem is not registered in the Land Register, it is not afforded protection under Czech law. A right in rem registered in the Land Register is always deemed to be registered in accordance with its factual legal status. Czech law creates a rebuttable legal presumption that the information incorporated into the Land Register is true. This means that every buyer, acting in good faith on the basis of the information registered in the Land Register, should not generally bear the risk of discrepancies between the registered status and the factual legal status of the real property in question. The advantage may therefore be seen in the fact that potential buyers of a real property theoretically do not need to examine the details of the factual legal status. However, it is highly recommended to always assess the accuracy of the entry in the Land Register and compare it with the legal title to the real estate in the process of comprehensive due diligence.

Owners of any real estate should verify whether their ownership right (or any other right in rem to the property owned by a third party) is properly and correctly registered in the Land Register in order to avoid possible future disputes.

Current owners are however protected by Czech law since the Land Register Office is obliged to notify the owners of real estate registered in the Land Register of any change of registered details related to their real property, and the Land Register Office cannot register such a change within the 20-day protection period (in Czech: "*plomba*"). Under this legislation, the notified owner or person with any right of rem is duly notified regarding any changes proposed towards the real estate in question and has time to stop such changes from being registered in the Land Register.

Additionally, any person (in particular the true owners or persons who consider themselves the owners of the real estate in question) affected by the registered change may require the Land Register Office to

register a so-called note of contentiousness, which expresses disagreement with the status of the real estate in question in the Land Register. There is a period of 30 days from the time of the notification of the person concerned (or a period of three years starting at the time of registration of the change in the Land Register in the case that the Land Register Office failed to notify said person) in order to keep the good faith of the (putative) buyer.

ENCUMBRANCES

Pledge (with respect to real estate also as a mortgage)

Under Czech law, any objects (and other things such as rights) that can be freely traded under Czech law can also be pledged and become a pledge.

Czech civil law does not use special titles for pledges established over different objects or rights. With respect to the fact that the word mortgage is habitually used to label a special type of pledge established on real estate, the word mortgage will be used in this guide while explaining the main aspects of establishing a pledge over real estate under Czech law. A mortgage can be established by means of a written agreement (a contractual mortgage) under Czech law or may also be established by the decision of the competent public authority. A mortgage is established and effective as of its registration in the Land Register. If the mortgaged real property in question is not registered in the Land Register, Czech law requires a form of notarial deed for the mortgage agreement, and in such a case, the mortgage is established as of the moment of the execution of such notarial deed or as of the date provided in the agreement.

Although the New Civil Code enshrines the principle of contractual freedom, the following arrangements with respect to the contractual mortgage remain prohibited between the contracting parties prior to the maturity of the secured debt: (i) the pay-out of mortgaged real estate by the debtor or the mortgagor (such an agreement is to be prohibited also after the maturity of the secured debt); (ii) the possibility of the enforcement of the mortgage by the creditor; (iii) the execution of the mortgage by the creditor (the selling of the mortgaged real estate) in an arbitrary manner or the retaining of the collateral for an arbitrary price or a price determined in advance (such an agreement is also prohibited after the maturity of the secured debt if the debtor is a consumer or a small or middle-sized entreprize); and (iv) the use of the proceeds from the mortgaged real estate by the creditor.

However, the mortgage can also be newly agreed upon between the parties regarding anything that the debtor (mortgagor) does not own at the moment of the execution of the mortgage agreement but will own in the future.

A positive change may also be seen in the possibility of using the existing entry of a mortgagee, registered in the Land Register, which would enable a new mortgage within the same limits to be registered within the same order/rank upon the termination of the previous mortgage (in Czech: "*uvolněná zástava*").

Easements (Passive and active)

(in Czech: *"věcná břemena"*)

Apart from mortgages, easements represent another instrument through which right in rem may be linked to real estate. Easements are divided into servitudes, consisting of a passive obligation to tolerate certain acts of an entitled person or to refrain from doing something, and burdens in rem, consisting of an active obligation to perform/carry out certain activities or acts.

Contracting parties may also agree upon different types of easements and upon types of servitudes not expressly defined by the New Civil Code.

Servitudes

Furthermore, the New Civil Code distinguishes between land servitudes and personal servitudes.

Land servitudes represent an obligation of the owner of the "obliged real estate" to refrain from doing something towards any owner of the "entitled real estate", in favour of whom a servitude is established. Such servitudes remain with the particular real estate and survive even after the transfer of the ownership right to the real estate in question. An example of a land servitude include the servitude of water, by which the owner of the obliged real estate where a source of water is located, is obliged to allow the owner of the entitled real estate to access the source of water to the extent agreed upon (i.e. refrain from blocking access to the water source).

Personal servitudes represent an obligation of a specific person to refrain from doing something towards a person who is entitled from such a servitude.

Burdens in rem

The burden in rem means that the owner of a real property in question is obliged to actively give or act in favour of the owner of the entitled real estate or person for whom such a burden in rem was established.

ACQUISITION OF REAL PROPERTY

Under Czech law, real property can be acquired either directly or indirectly. Direct acquisition (an asset deal) means a direct payment is made for the transfer of the ownership right to the real property in question to the real property owner. Indirect acquisition (a share deal) is conducted through the acquisition of the legal entity that owns the targeted real property. A completely unique way of the acquisition of real property is returning the ownership to the owners by way of restitution. There are also other ways of acquisition of real estate available under Czech law, such as inheritance or donation.

Asset Deal

Under Czech law, the ownership title to a real property must be registered in the Land Register. Without the registration of the real property transfer in the Land Register, the ownership right to the real property does not transfer from the previous owner (seller) to the buyer. Therefore, the ownership of real property is only obtained as a result of registration in the Land Register.

Signatures on a real property transfer

agreement require verification, and the signatures of all signing parties have to be on a single document. If a foreign legal entity is involved as a purchaser or seller, its existence and authorisation of its representatives must be proved to the registering office of the Land Register, in most cases by a certified extract from the applicable register of companies, along with an official translation into Czech.

Share Deal

Under Czech law, an acquisition of a share in a company also means a succession of all of its rights and duties, also including the ownership right to any assets, including real property associated with such a share. As the actual real property owner (the target company) remains the same, there is no need for any registration of changes in the Land Register, although certain court fees apply to the registration of changes in the Commercial Register, where the change of ownership of the share in question is registered.

Overview

ADVANTAGES	
SHARE DEAL	**ASSET DEAL**
No problems with legal succession	Possibility of selling individual assets or companies or parts of companies to debt-free rescue companies
Indirect transfer of all rights and obligations (no acts of transfer needed with respect of individual assets)	Liabilities and obligations do not transfer
Deductibility of financing interest	Tax deductibility of financing interest and tax revaluation of the acquired assets
Possibility of subsequent restructuring	

DISADVANTAGES	
SHARE DEAL	**ASSET DEAL**
All liabilities and obligations remain with the company – no clean-up of legacy liabilities	The only purchase possibility in certain cases, e.g. insolvency
Compliance with formal requirements	Singular succession (transfer act with formal requirements needed for each asset)
While financing interest is tax-deductible, other expenses are not	Legal transition of certain contracts (under labour law, tenancy law, insurance law)
No tax revaluation of the company's assets	Assumption of liabilities and obligations
Risk of rescission in the event of the seller's insolvency	Obtaining a shareholder resolution
Obtaining a shareholder resolution (in the case that such real estate constitutes significant assets of the company or in the case that such is required by law/the company´s statutes, depending on the company´s form)	Fees and transaction taxes in connection with the transfer of certain assets
DD of both the target company and the real estate	Risk of rescission in the event of the seller's insolvency

LAND PURCHASE BY FOREIGN NATIONALS AND LEGAL ENTITIES

The acquisition of any real estate by foreign nationals or legal entities is no longer restricted, with only one exception. This exception applies to land used for agriculture being sold by the state, which can only be acquired either by Czech or EU citizens or by legal entities registered as agricultural entrepreneurs and residing in the Czech Republic or within the EU while being of a similar status.

RESTITUTION

Outgoing restitution of the ownership to real property of church in the Czech Republic can be considered a rather negligible threat to commercial real property transactions, as it only concerns real property currently owned by the Czech Republic (and expropriated from the church during the Communist regime). Only recently the Parliament of the Czech Republic decided that the compensation for church would be in the form of monetary compensation rather than real property restitution. As of 1 January 2016, restitution consists of monetary compensation only.

The possibility of initiating proceedings for restitution of ownership rights to real property that was confiscated during the Communist regime by other people and entities (different from the church) was terminated by new Czech legislation as of 1 July 2018 (also known as the "*restitution stop*"), which constitutes an end to the possibility of applicants requiring replacement land for the land taken in the years from 1948 to 1989 by the Communist regime. However, the ongoing proceedings for the restitution of ownership rights to real property are still ongoing (and are not terminated by the new legislation); nonetheless, new rules as to the replacement land for the land taken in the years from 1948 to 1989 apply, and now only monetary compensation may be awarded.

M&A INSURANCE

Transaction liability insurance generally aims to cover financial losses or liabilities arising from claims under the seller's indemnification covenants and from a breach of a seller's warranty obligations. The insured party can be either the seller, seeking insurance for a possible buyer's claims arising from any breach by the seller of its indemnity or warranty obligations, or more commonly the buyer. In the latter case the buyer can directly claim the amount to which it is entitled under the sale and purchase agreement.

It is important to stress that the fulfilment of the seller's warranties is usually a necessary requirement of each transaction for the payment of the remaining part of the purchase price by the buyer. Transaction liability insurance is therefore often used by sellers (such as investment funds) who are obliged to pay off third parties immediately after the effectiveness of a transaction.

In the Czech Republic, this type of insurance is sought mainly by foreign investors who insist on including the transaction liability insurance of the seller as a

mandatory provision in the transaction documentation but is also required by local Czech entrepreneurs and businesses. Generally, clients usually seek two types of insurance products: either "Title Insurance", insuring the valid title of the seller to acquired real estate or shares, or "Representation & Warranties Insurance" (sometimes also known as "Warranties & Indemnities Insurance").

When insuring the sellers' warranties (also known as R&W insurance), the limit of the insurance payment usually corresponds to the amount of the seller's liability (also known as liability cap). In the case of a EUR 30 million transaction and a 20% seller's liability, the liability limit would be EUR 6 million.

The price of transaction liability insurance is usually calculated as 1 to 1.5 percent of the agreed upon liability limit. Premiums are typically paid once, for the whole insurance period, which is usually two to three years (and depending on the conditions of each transaction).

With regard to businesses, this insurance product is mostly used for transactions in the area of IT, wholesale, machinery and heavy industry and last, but not least, real property. As there is a growing interest in this product, transaction liability insurance products are not yet offered directly by domestic (Czech) insurance companies but are usually mediated by economic advisors or transaction risk consulting companies with foreign insurance companies.

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SUPERFICIES SOLO CEDIT

Prior to the effectiveness of the New Civil Code, Czech civil law, unlike the law of many other European countries, allowed for the separate ownership of a building and the land plot on which the building was located. Hence, the acquisition of a building with its land plot required either two separate transfers of ownership from the same owner (i.e. the transfer of ownership of a building and the transfer of ownership of a land plot) or two separate agreements in the case of two separate owners (i.e. an agreement with the landowner and an agreement with the owner of the building). This inconsistency in ownership made transactions slower and less cost effective than investors would have liked. Consequently, the removal of separate ownership was highly demanded by both laymen and professionals in the field.

The New Civil Code stipulates that a building located on a land plot owned by the same person who owns such land becomes a part of such land plot, and therefore legally they start to form one real property with a single ownership to the land plot. On the other hand, as a rule, the separate ownerships existing prior to 1 January 2014 do not automatically become a single ownership. If the owners of a building and a land plot are different persons, they have a statutory pre-emption right towards each other that cannot be excluded or limited by any agreement concluded after 1 January 2014. Such a pre-emption right should slowly result in the unification of the owners of the land and building located on such land.

Furthermore, there are some exemptions under which ownership remains separated even after 1 January 2014 even if the building and the land plot belong to the same owner. Firstly, some buildings (for instance, temporary buildings) do not become part of land plots and remain separate real properties. Secondly, if the building or the land plot is subject to a right in rem, such a situation excludes unification (for instance, the existence of a pledge securing various rent debts would prevent such a unification), and the building will not become a part of the land plot as long as such a right in rem exists.

BUILDINGS ON THIRD PARTY'S LAND

The superficies right (right to build) means that a beneficiary of such a right is entitled to erect a building on or under the land plot of another person, and to do so free of charge or for the agreed consideration.

The objective of this right in rem is to allow for the use of the land of another person mainly for construction purposes. The superficies right itself is an immovable real property; it can therefore be transferred, encumbered, acquired by prescription, and it is also subject to inheritance. A building suitable for the superficies right forms a part of such a right to build and is transferred within the transfer of the right to build.

The superficies right is not a part of the land plot in question, but the beneficiary and the landowner have a statutory pre-emptive right towards each other.

The superficies right is a temporary right in rem, which may be established for a maximum of 99 years (with the possibility for prolongation for another period of a maximum of 99 years), and it may be acquired by written agreement, acquisitive prescription or the decision of a public authority. It is established upon its registration in the Land Register in the case of the contractual and the statutory superficies right. If the superficies right expires, the owner of the land must pay half of the market value of the building to the building owner the day the superficies right ceases to exist, unless otherwise agreed between the parties.

LEASE OF REAL PROPERTY

Business Lease

Any premises or area that is predominantly used for business purposes may be leased for business purposes (business lease). It is now also possible (and can be recommended) to register the business lease in the Land Register, which adds a higher level of certainty for the tenant, so that in the case of the future sale or any transfer of the leased real property in question, the new owner is expected with respect to the principle of publicity of the Land Register to be aware of such a business lease. The rule that the new owner of the real estate in question could not reasonably expect the real property in question to be leased does not apply, and the new owner is not obliged to terminate the business lease.

Residential Lease

Residential leases are also governed by the Czech Civil Code. The regime of the Civil Code provides substantial flexibility for both parties to agree upon provisions that best suit their needs. However, the Civil Code provides fairly high protection to the tenants of residential premises, deemed to be the weaker parties to lease agreements. That means that tenants have certain mandatory rights that cannot be waived. Residential lease agreements, for instance, must be concluded in written form and may be terminated for reasons stipulated by the law only. For the same reasons, the parties to a residential lease agreement cannot agree on a contractual penalty to be paid by the tenant.

As for the termination of a residential lease, the termination period for an indefinite lease was extended to six months, but it may be shortened to three months if there is a reasonable cause for it. A party to whom the termination notice has been served is entitled to object to the notice in writing within one month of the delivery of the notice. Otherwise, the right to review the legitimacy of the termination notice will expire.

SHORT TERM LEASE OF REAL PROPERTY - AIRBNB ET AL.

Czech law explicitly does not recognise the term "short-term lease". As a result, Czech authorities and Czech financial administrations have had to face the growth of short-term leases by both owners of real property and short-term lease users and decide upon the most applicable provisions of Czech law.

According to a statement by the Czech financial administration from 11 October 2017, short-term leases offered via Internet platforms such as Airbnb are considered under Czech law as accommodation services and not as leases. As a result, several tax obligations apply to the providers of such short-term accommodation services.

Taxation of Short-Term Leases

Firstly, the provision of short-term accommodation is considered a business and is subject to value added tax. Therefore, providing accommodation services to guests in the Czech Republic against payment of a fee by a person whose economic activities are registered for VAT purposes is considered subject to VAT. For providers of short-term accommodation who are not yet registered for VAT purposes, income from short-term accommodation must be included in the calculation of the statutory turnover for mandatory VAT registration. If the accommodation provider is already VAT registered, income from short-term accommodation must be included among the standard taxable services listed in the VAT return.

If an electronic service provider (e.g., an Airbnb) is a foreign entity not established in the Czech Republic and charges an electronic service fee (e.g. a service fee for using the online platform by the providers of accommodation), then the recipients – taxable persons (providers of short-term accommodation) – must pay VAT on that service in their country of domicile. If such providers of short-term accommodation are not yet VAT registered, they are obliged to register as identified persons in order to be taxed for using said online platform services.

If the activity of the entities providing regular or repeated short-term accommodation via Internet platforms fulfils the Czech definition of a business (business activity carried out by an entrepreneur with sole responsibility, as a sole trader, or in a similar way, with the intention of doing so consistently for a profit), then the income from such activities is also subject to income tax levied on individuals, as income from self-employment. If the short-term accommodation provider is a legal entity, then income from any activities and from any disposal of all property is subject to income tax.

Electronic Evidence of Sales

If the taxpayer's activity fulfils the characteristics of business activity, meaning that short-term accommodation services are provided via Internet platforms consistently and for a profit, and if said provider receives cash, credit card payments or other similar payments for the provision of short-term accommodation services, the service provider is then also obliged to record the sales in accordance with the Czech Act on the Electronic Evidence of Sales.

Trade License

As the short-term lease of real property is considered an accommodation service under Czech law, the providers of that short-term accommodation must acquire a "trade license for accommodation services". Premises for which such short-term accommodation is provided must be registered with the trade licensing office.

Other obligations

As with any other provider of accommodation services, providers of short-term accommodation are also obliged to maintain a house and record book, in which they are required to evidence each guest's name and surname, address of permanent residence, travel document number (or identity card number), length/dates of accommodation and purpose of stay (along with information on the date of birth and citizenship in the case of foreigners, including foreigners from other EU countries) for the purposes of the payment of leisure and spa fees.

Limitation

Currently, Czech law does not in any way limit the provision of short-term accommodation like in other EU countries (such as putting restrictions on the number of rooms to be let in one apartment or on services provided along with a short-term lease). However, recently there have been calls for stricter regulation of these services, especially in Prague city centre, mainly due to housing shortages and exorbitant rents for long-term accommodation. So far there are no official bills stipulating any new obligations for the owners offering short-term accommodation.

However, one of the effective measures to prohibit the owners of housing premises from providing short-term accommodation in such premises is to prohibit such activities in the statutes of the association of the owners of housing units (such an association is obligatorily formed in houses with more than five housing units in

which at least four of such units are owned by four different owners).

PUBLIC PERMITS

In order to realize a building project, the builder must obtain a building and an operational facility permit from the respective authorities.

Czech administrative proceedings in which building permits are granted are considered as time demanding and complex, imposing a number of requirements on building permit applicants.

Recently, a new draft Building Act was tabled by the Czech government and will now be subject to the legislative procedure in the Parliament of the Czech Republic. The bill brings substantial changes to all aspects of obtaining a building permit in the Czech Republic aimed at making the administrative proceedings quicker and simpler. However, this bill is controversial for many and as such its wording may yet be significantly changed during the legislative procedure. As of now, this bill – if passed by the Parliament as planned (which we do not expect) – is scheduled to become effective progressively between 2022 and 2023.

TAXES AND FEES

The sale of real property constitutes income and is therefore subject to income tax. However, there are a number of cases in which the seller is exempt from the payment of income tax. The seller (for the sale of real estate in question) is not subject to income tax in the case that the seller has owned the property being sold for at least five years, or respectively if the period between the acquisition and subsequent sale of the real estate exceeds five years.

Further, the seller (in order to be subject to income tax from such a sale) must have permanent residency in the Czech Republic. A natural person pays income tax of 15%. The tax base (partial tax base) is the income reduced by the expenses demonstrably incurred to achieve it. If a property is owned by a legal entity, the income and expenses from the sale of the property are included in its tax base and the legal entity pays a corporate income tax of 19%.

As of 26 September 2020, the real estate acquisition tax amounting to 4% of the acquisition value was abolished in the Czech Republic. As a consequence of this, the real estate acquisition tax should not be paid for any real estate transfers approved by the Land Register after 1 December 2019.

The ownership of real property is subject to real property tax. Real property tax differs depending on the ownership of land plots and buildings registered in the Land Register of the Czech Republic. The amount of real estate tax paid on land plots may vary depending on the nature of the land or purpose of the land (such as land for building purposes or agricultural plots). The tax amount is calculated from the size of the property expressed in square meters multiplied by the average square meter price for land in the area where the land plot is located and a coefficient, which depends on the population density – the higher the density, the higher the coefficient (the highest possible coefficient being 5). The tax is paid only for the part of land upon which no building is erected so that the payer will not pay the amount twice. The real estate tax is generally paid by the owner, except under certain conditions – for instance, when the property is owned by the state and rented to a third person, the third person is the payer of the tax.

OVERVIEW ON FEES AND TAXES

TAXES AND FEES	RATE
Fee for registration of ownership	CZK 2,000
VAT (opting-in)	21%
Fee for Registration of mortgage	CZK 2,000
Real Property Tax	Individual, depending on the property type, purpose, or location
Stamp duty for lease agreements	CZK 2,000

ENVIRONMENTAL LIABILITY

The legal liability of an owner of real property in the Czech Republic is mainly governed by the Czech Civil Code and various other statutory provisions. Criminal liability is not commonly referred to in this situation.

The extent of liability depends on the type of land in question. However, liability is mainly covered by the "polluter pays" principle.

COVID-19 REGULATIONS WITH RESPECT TO REAL ESTATE

In 2020, a number of governmental measures and ad hoc pieces of legislation were enacted as a direct result of the COVID-19 pandemic, and such acts and measures also affected Czech real estate legislation.

One of the most significant changes in this area are measures related to the lease of commercial premises. The Czech government, in order to support tenants in shopping centres affected by restrictive measures, adopted specific rules stating that until the end of 2020 the lease of commercial premises cannot be unilaterally terminated by the landlord solely on the grounds of a tenant's delay in the rent payment, provided that such a delay occurred between March 2020 and June 2020, i.e. during the first COVID-19 lockdown, and that the respective tenant was affected by the governmental measures.

Further, commercial tenants were entitled to apply for support under a state subsidy program, covering partial rent payments (up to 50%) for the period from June 2020 until September 2020, provided that the tenant's business premises were affected by the lockdown and the tenant agreed with the landlord on a certain discount of the rent.

All legal entities were also affected by so-called "*Lex Covid*", which (likewise in other European countries) prevented creditors from filing insolvency proposals

(the proposals of debtors themselves were however allowed) between March 2020 and September 2020 and allowed debtors to file for a special type of moratorium, allowing debtors to cope with measures and restrictions introduced by the government in response to the COVID-19 crisis.

As of October 2020, it is not yet clear whether there will be more state policies supporting the lockdown of certain activities and businesses.

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Hungary

Real Estate Law in Hungary

THE LAND REGISTER

The Land Register (*ingatlan-nyilvántartás*) is a system that includes the statutory details of every real property in every locality in Hungary, as well as the rights and other legally relevant information associated with each real property. All real properties may be identified in the Land Register based on their topographical lot number and municipality.

The Land Register is managed by local organisations known as land offices (*földhivatal*), forming part of the local government agencies (*kormányhivatal*). A land office will only make entries in the Land Register on the basis of documents which comply with all the statutory formalities or on the basis of resolutions issued by authorities or courts.

Real estate registration has two fundamental principles in Hungarian law. One is that the Land Register is guaranteed to be authentic (*közhitelesség elve*), i.e. one may rely on the information and rights registered as being valid and accurate. Therefore, if a right or information is entered in the Land Register, no person or entity may claim that they were not aware of such rights or information and use this as a defence. The principle of authenticity is closely related to the other fundamental principle, public accessibility (*nyilvánosság elve*). Anyone can access title deeds and title plans, make notes of them and request certified copies of them. However, the documents that serve as the basis for a register entry can only be accessed if the applicant confirms that they have a rightful interest in such access. The entries are registered in the Land Register in a ranking order on a first come, first served basis, i.e. the ranking of an entry in the Land Register is determined by its filing date. The Land Register cannot be searched based on the name of the landowner, except for special cases restricted by law.

Encumbrances

The most important encumbrances on real properties include mortgages, personal and land-related easements, prohibitions of sale and encumbrance, and land use rights. These encumbrances are deemed to exist from the date when they are recorded in the Land Register.

Mortgages

Mortgages (*jelzálogjog*) are the most common form of security for bank loans.

The Hungarian Civil Code (*Ptk.*) allows the mortgagee (typically a financial institution) to enforce the mortgage by way of judicial enforcement. In order to recover a debt that the mortgagor did not duly pay, mortgage agreements usually include a clause enabling the mortgagee to sell the real property directly, without the involvement of a court. A mortgage is not marketable in itself, but when the secured asset is sold, the mortgage transfers to the new owner.

A mortgage is created in two steps. Firstly a mortgage agreement is required, and secondly the registration of the mortgage. A mortgage agreement requires a written form in order to be valid, and it must specify the claim secured by the mortgage and the mortgaged asset.

Due to the accessory nature of a mortgage, it reflects what happens to the claim it secures, and therefore the mortgage applies to damages or indemnification received with respect to the mortgaged assets and claims for the same, as well as to assets that might replace the mortgaged asset.

Personal Easements

Usufruct and use

An easement (*szolgalom*) is a limited right in rem that allows a person or entity to use a property owned by someone else for a specific purpose. There are two categories of easements: personal and land-related. Personal easements may benefit natural persons and legal entities alike. An easement can only exist for a limited time in both cases: up to the death of a natural person and for up to 50 years in the case of a legal entity.

Usufruct is a personal easement where the beneficiary of the usufruct (the usufructuary) may possess, use and enjoy the benefits of another person's property, but must return it to the owner without any damage to it once the usufruct ceases to exist. The owner may possess, use and enjoy the benefits of the property to the extent the beneficiary does not take advantage of usufructuary rights. Usufructuary rights are transferable.

The holder of a right of use may use the relevant property to the extent of their needs and the needs of any family members and enjoy its benefits. A right of use may not be transferred.

Land-Related Easements

On the basis of a land-related easement, the owner of the dominant estate may use the servient estate for a specific purpose. Such easements include access easements, which allow the owner of a piece of land without access to a public road to travel across neighbouring lands to get to such road.

Prohibition of sale and encumbrance

The prohibition of sale and encumbrance (*elidegenítési és terhelési tilalom*) limits ownerships rights, i.e. the owner may not sell or mortgage the relevant property without the prior consent of the entitled entitywhile the prohibition is in place. It is also possible to register only a prohibition of sale, and in that case the property may be encumbered.

ACQUISITION OF OWNERSHIP

Asset Deal

The acquisition of ownership requires the existence of several conditions at the same time. For the acquisition of ownership of real estate by transfer, a contract on the transfer or another legal title is required together with the registration of the transfer of the ownership accordingly.

Share Deal

The acquisition of real property via a share deal – by purchasing 100% of the shares in the company owning the real property – leads to "factual" universal succession,

which secures all rights and duties for the acquirer associated with the shares and guarantees a continuity of contracts related to the real property. Due to the lack of a new owner of the real property, no fees for registration in the Land Register are incurred. If the buyer acquires 75% or more of the shares of the company, the duty to pay land transfer tax is, however, still triggered (see below).

Acquisition of ownership – share deals vs. asset deals

In Hungary, the ownership title to a real property may be obtained by acquiring the special purpose vehicle owning the real property (share deal), or by acquiring plainly the real property as it is (asset deal).

The advantages and disadvantages of a share deal compared to an asset deal can be decided on a case-by-case basis. Such an evaluation should mainly consider the financial status of the special purpose vehicle and the respective tax and entrepreneurial conditions of the transaction.

As asset deals have the advantage that the obligations and liabilities of the special purpose vehicle remain with the seller, the buyer may insist on an asset deal when purchasing assets from a distressed company.

On the other hand, a share deal may be a safer option if the real property is subject to right of first refusal to buy by third parties. In such a case, the parties can exclude the risk of exercising such pre-emption right by the entitled third party by transferring the ownership of the special purpose vehicle instead of the real property itself. Due to certain statutory provisions, the Hungarian State has the right of first refusal to buy several real properties in the historical and commercial districts of Budapest, the capital of Hungary. In the case of these properties, it may be advisable to go with a share deal instead of an asset deal, as the State tends to exercise its pre-emption right more and more frequently.

Overview

ADVANTAGES	
SHARE DEAL	**ASSET DEAL**
No problems with legal succession	The only purchase possibility in certain cases, e.g. insolvency
Indirect transfer of all rights and obligations	Possibility of selling individual assets or parts of companies to debt-free rescue companies
The target company's losses carried forward remain utilizable	Liabilities and obligations will not be transferred (except if explicitly stipulated otherwise by law, for example in case of tenancies in accordance with Section 6:340 (2) of the Hungarian Civil Code)
The exercise of any third parties' right of first refusal to buy in relation to the real property can be avoided	
Certain types of privileged share deals are exempted from transfer tax	

DISADVANTAGES	
SHARE DEAL	**ASSET DEAL**
All liabilities and obligations remain with the target company	Singular succession (separate transfer act needed for each asset)
Risk of rescission in the event of the target company's insolvency	Automatic legal transition of certain contracts (e.g. under labour law and tenancy law)
	Non-transferable rights: e.g. permits and licenses under public law are established/requested for the new owner of the real property once again
	No transfer of tax losses
	Accrual of real estate transfer tax

M&A INSURANCES

The increasing number of real estate transactions in Hungary also significantly increased the demand for transaction liability insurance, which has mainly gained in popularity thanks to its power to close the gap between the buyer's and the seller's transactional interests. Recent trends in Hungary show that requests for title policies covering "unknown" title risks have decreased while demand for specific or "known" risks arising out of not fully comprehensive due diligences has vastly increased. According to current outlooks, this trend is likely to continue and the popularity of warranty and indemnity insurance will continue to soar on the Hungarian real estate market.

SALE OF AGRICULTURAL AND FORESTRY LAND

Under the Land Act (*Földtörvény*), Hungarian nationals and nationals of other EU Member States may acquire agricultural land (*termőföld*) in Hungary; nationals of third countries and (with some exceptions) legal entities may not.

Hungarian and EU nationals may only acquire land plots of one hectare or less if none of the statutory beneficiaries (e.g. the Hungarian state) exercises their right of first refusal and the competent agricultural authority approves the acquisition. Land plots larger than one hectare may only be acquired by farmers (persons who hold a degree in agriculture or have been cultivating land for a living for at least three years) and a farmer may own a maximum of 300 hectares of land.

There is a land use register (*földhasználati nyilvántartás*) indicating information on the purposes for which each piece of land is used. It qualifies as an authentic public record.

There are also special formalities concerning contracts on agricultural land in order to prevent "pocket" (or concealed) contracts.

BUILDINGS ON THIRD PARTY LAND

A land use right (*földhasználati jog*) arises when a piece of land and a building erected on it are not owned by the same person or entity, and the owner of the building has the right to use the land (or a part of it) as long as the building stands. The land may

be used to the extent necessary in order to use the building for the intended purpose.

LEASE OF REAL PROPERTY

Types of leases

Hungarian law recognizes different types of contract permitting the use or tenancy of land (*földbérlet*) and the tenancy of residential properties (*lakásbérlet*) and other premises (*helyiségbérlet*).

Tenancy law is governed by the Hungarian Civil Code (*Polgári Törvénykönyv*), mainly by general provisions and the Hungarian Home and Premises Act (*Lakástörvény*), which includes more specific rules. Lease agreements cannot be registered in the Land Register.

Lease term, termination

Parties are free to conclude a fixed-term lease or an open-term lease. In case of fixed-term leases where the tenant continues to use the real property after the end of the fixed term and the landlord does not challenge such continued use within 15 days from the end of the term, the contract turns into an open ended contract, unless the parties have explicitly opted out from the application of this statutory provision.

In general, either party is entitled to end an open-ended lease agreement at will. A fixed-term lease agreement cannot be terminated at will; early termination requires cause.

As regards termination for cause, the tenant is entitled to terminate the lease agreement if the landlord does not guarantee that the real property is suitable for use. The landlord is entitled to termination for cause, for instance, if the tenant fails to pay the rent or does not stop inappropriate/non-contractual use of the real property even following notice from the landlord.

Operating costs

The operating costs are paid in consideration for use of a building or facility. The tenant bears the operating costs, but the parties are free to decide on the amount of the operating costs.

Maintenance and repair

The costs associated with the repair and maintenance of real property are shared between the parties in such a way that the tenant is liable for small expenses concerning the maintenance of the property while the landlord must assure that the leased premises are in a condition which is appropriate for use. Therefore, the landlord is responsible for repairing any defect that materially hinders use of the property in accordance with its intended purpose or which poses a danger to life or structure of the building. However, the Civil Code does not prescribe an explicit allocation of costs for maintenance and repair between the parties. Therefore, the parties may also agree on a different cost sharing method.

The tenant must inform the landlord if the property is in danger of being damaged or if works, for which the landlord is responsible, should be carried out. If the landlord fails to repair existing defects, the tenant is entitled to carry out the repairs at the landlord's expense. In other less imminent cases, the landlord is required to carry out the repairs at the time when the building is otherwise being renovated.

The landlord has a pledge over the tenant's assets located in the property to the extent of the rent and the expenses payable by the tenant. While this rule only used to apply to residential property in the past, recently passed legislation extended it to cover all real properties in general.

Effects of change of control

In case of leased properties, a change of control affecting the lessee's or the lessor's entity has no effect on the existence of the real property lease agreement. If a real property is sold, the lease agreement continues to exist between the new owner of the property as lessor and the lessee by virtue of law under the Hungarian Civil Code.

SHORT TERM LEASE OF REAL ESTATE - AIRBNB ET AL.

Although short term leases are still not among the most popular options available to real estate owners in Hungary, the market for short term leases has gradually been growing in recent few years, especially due to increased demand for short term residential leases (such as Airbnb). The Hungarian regulations do not include special or restrictive provisions on short term leases.

PUBLIC PERMITS

Construction works are subject to a prior building permit (*építési engedély*) issued by the building authority in almost all cases, and the authority may determine preconditions for the issuance of the permit. Under the regulations, hefty fines may be imposed if a request for a permit is not submitted, i.e. construction starts without a permit. The building authority may also carry out site inspections to check compliance with professional and technical standards and specifications. For the use of a building, an occupancy permit (*használatbavételi engedély*) must be obtained.

TAXES AND FEES

Acquisition of land and buildings

The acquisition of real property and any building erected on such property is subject to Real Estate Transfer Tax (*RETT, ingatlan vagyonszerzési illeték*). The RETT tax base is the market value of the real property (including the building), excluding any encumbrances. The rate is 4% up to the first HUF 1 billion of the tax base, and 2% for the amount exceeding the HUF 1 billion limit. The total amount of RETT is capped at HUF 200 million. RETT falls due when a property is acquired.

Ownership of real properties must be registered in the Land Register, which is subject to a registration fee of HUF 6,600 (approximately EUR 21). Except for new real properties (i.e. building plots or real properties which have never been occupied before), transactions for the acquisition of

real property are generally exempt from VAT but the parties may opt to charge VAT on the purchase price. This is required in particular if later on an input tax deduction is made on the costs of erection, maintenance and other investments. The VAT rate is 27%.

Owning land

Real properties are also subject to real property tax (*ingatlanadó*), which can be building tax for buildings and plot tax for land plots. Such tax is payable to the local municipalities which are free to determine the tax rate.

Encumbrances

The fee for registering a mortgage or a change in the mortgage is HUF 12,600 (approx. EUR 40) per real property.

Sale of property by private individuals

If the seller of a real property is a private individual, the sale is subject to personal income tax (at a rate of 15%) provided that the sale price of the property exceeds the purchase price the seller had purchased the property at and less than 5 years lapsed between the purchase and the sale of the property .

OVERVIEW ON FEES AND TAXES:

TAXES AND FEES	RATE
RETT (real estate transfer tax)	4% (up to HUF 1 billion) and 2% (above the amount of HUF 1 billion) of consideration or tax value but capped at HUF 200 million).
Registration of ownership	HUF 6,600 (app. EUR 21)
VAT (opting-in)	27% of consideration or tax value
Registration of mortgage	HUF 12.600 (app. EUR 40)

ENVIRONMENTAL LIABILITY

With respect to environmental liability, the Act on the General Rules of Environmental Protection regulates the legal liability and obligations regarding environmental pollution on real properties, such as damage to surface waters, the subsoil, subsurface waters and natural reserves. Under Hungarian law, there are three main aspects of liability connected to environmental pollution. Criminal liability is borne by the person causing the pollution.

The parties to a property sale and purchase agreement are entitled to exclude their liability for environmental pollution between themselves. However, under the terms of administrative liability, if the competent environmental agency determines that pollution has occurred, it is entitled to impose a fine on the person or entity who/which owns the property at the time when the fine is imposed, irrespective of whether the pollution has been caused by such owner or by a previous one.

COVID-19 REGULATIONS WITH RESPECT TO REAL ESTATE

As per Government Decree No. 47/2020 (III. 18), the non-residential lease agreements of tenants active in the tourism, hospitality, entertainment, gambling, film production, performing arts, events organisation and sports services sectors could not be terminated with unilateral termination until 30 June 2020, and the rent fee could not be increased during the state of emergency (not even in cases where such an increase is explicitly permitted by the lease agreement) under the non-residential leases of tenants active in the mentioned sectors. The state of emergency was terminated as of 18 June 2020.

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Romania

Real Estate Law in Romania

THE LAND REGISTER

Rights with respect to real property, such as ownership rights, mortgages, easements, land charge obligations, litigation and others, are registered in the Land Register (*Carte Funciara*), which is administered by the National Agency for Cadastre and Land Registration (at a centralized level) and by the subordinate County Offices of Cadastre and Land Registration (at a county level). In each county there are several local Offices of Cadastre and Land Registration, directly subordinated to County Office. Each land plot is identified by a unique cadastre number and is registered in a unique Land Register (or Land Book –*Carte Funciara*).

The Civil Code of Romania institutes the "principle of registration" which means that the acquisition, transfer, limitation and suspension of rights concerning real property can only be effected by registration in the Land Register. As long as the legal transaction is not registered in the Land Register, it is not opposable by third parties and the parties to the contract only have contractual claims against each other.

The Land Register is public and everyone has the right to access the register and to obtain excerpts of Land Books. Every person or entity may rely on the assumption that the Land Register contains accurate and complete information on all rights and obligations with respect to the real property.

ENCUMBRANCES

The most relevant encumbrances in relation to real property are mortgages, easements, land charge obligations and restrictions on sale and encumbrances, which can be registered in the Land Register and are individualized rights to third party property. Encumbrances are registered in the land register in a ranking order (defining the priority of rights) on a first come, first served basis.

Mortgages

A mortgage is a right of lien against a property. A right of lien is the right granted to the creditor to obtain satisfaction from a specific property if the debtor does not pay the debt as agreed. If the mortgagor does not fulfil its obligations, the mortgagee has the right to initiate enforcement proceedings to recover the outstanding liabilities. The mortgagee also has the option to take over the property in the account of the debt (only within an enforcement procedure), becoming the rightful owner of the real property and being registered as such in the Land Register.

Easements and land charges

Easements are limited, precisely defined rights (considered encumbrances of the real property) to use third party real property.

Property easements grant the respective owner of the "dominant" property certain rights over the "servient" property. A typical example of an easement is the right to

cross the servient property in order to access the dominant property (right of way).

The Civil Code of Romania organizes easements into apparent or unapparent, continuous or non-continuous and positive or negative easements.

The beneficiary of an easement is obliged to exercise the easement right by exercising great care in respect of the servient property and has the obligation not to aggravate the "servient" property due to the use of the easement.

ACQUISITION OF PROPERTY

The acquisition of property is possible in the form of an asset deal, by acquiring the property concerned directly, or in the form of a share deal, by acquiring the property owning company.

Asset Deal

The direct acquisition of property requires the conclusion of a notarized contract as well as registration of the new owner in the land register; registration of ownership represents the "*modus*" of the acquisition without which ownership to the property cannot be obtained. Prior to the transfer of the property right, the seller is obliged to obtain a certificate from the Tax Department of the City Hall where the property is located, which must confirm that all taxes related to the real property in question have been paid. The transfer of the ownership right cannot be performed without the land taxes being fully paid. The direct acquisition of property triggers land transfer taxes.

Share Deal

An acquisition of property via a share deal leads to "factual" universal succession, which secures for the acquirer all rights and duties associated with the shares and guarantees a continuity of contracts related to the property. Due to the lack of a new owner of the property, no fees for entry in the land register are incurred. A share deal will be registered with the corresponding Trade Registry only after the fulfilment of all procedures and legal provisions including the payment of Trade Registry taxes. This type of transfer may, under certain conditions, also trigger land transfer taxes.

Overview

ADVANTAGES	
SHARE DEAL	**ASSET DEAL**
No problems with legal succession	The only purchase possibility in certain cases, e.g. insolvency
Indirect transfer of all rights and obligations (no acts of transfer needed in respect of individual assets)	Possibility of selling individual assets or companies or parts of companies to debt-free rescue companies
Possibility of avoiding the real estate transfer tax	Liabilities and obligations usually will not transfer
	Tax deductibility of financing interest and tax revaluation of the acquired assets

DISADVANTAGES	
SHARE DEAL	**ASSET DEAL**
All liabilities and obligations remain with the company - no clean-up of legacy liabilities	Legal transition of certain contracts (lease agreements, easements, superficies) (some exceptions apply in case of insolvency)
Compliance with formal requirements	Assumption of liabilities and obligations (exceptions in case of insolvency)
Expenses with the transfer of share are not deductible	No transfer of tax losses
No immediate tax revaluation of the company's assets (real estate assets must be re-evaluated once every 3 years)	Accrual of real estate transfer tax
Tax liability of the seller on capital gains	Obtaining a shareholder resolution
Risk of rescission in the event of the seller's insolvency	The seller realizes a taxable capital gain;
	Risk of rescission in the event of the seller's insolvency

LAND PURCHASE BY FOREIGN NATIONALS

As of 1 January 2014, foreign companies and foreign nationals of members states of the European Union or the European Economic Area (Iceland, Liechtenstein and Norway) may acquire real property (including agricultural land, forests and forestry land) without any additional prerequisites, subject however to reciprocity.

Regarding foreigners from third countries, the acquisition of land in Romania by acts inter vivos is possible only on the basis of reciprocity with the home state (in case treaties have been signed between Romania and the corresponding third country).

Acquisition of agricultural land located outside the built-up area (*teren agricol intravilan*)

As of 13 October 2020 (when the latest amendments to the law on the sale and purchase of agricultural land in Romania entered into force), the conditions applicable to the purchase of agricultural land located outside a built-up area in Romania became stricter, in particular for companies.

Thus, if the pre-emption right provided by law for certain categories (e.g. co-owners, relatives, spouses and in-laws up to the third degree, owners of agricultural investments over agricultural land for trees, vines, hops, exclusively private irrigation and or agricultural tenants) is not exercised by the beneficiaries, the sale of agricultural land located outside a built-up area will may be done to:

- individuals who meet the following cumulative conditions: (i) have had their domicile/residence in Romania for at least 5 years prior to registration of the sale offer; (ii) have performed agricultural activities in Romania for at least 5 years prior to registration of the sale offer; (iii) have been registered with the Romanian fiscal authorities for at least 5 years prior to registration of the sale offer, and
- companies which meet the following cumulative conditions: (i) have had their headquarters/secondary office located in Romania for at least 5 years

prior to registration of the sale offer; (ii) have performed agricultural activities in Romania for at least 5 years prior to registration of the sale offer; (iii) have provided proof (based on documentation) that, of the total income generated over the past 5 fiscal years, a minimum of 75% represents income from agricultural activities (as determined by the Code of Classification of Activities in the National Economy - CAEN Code); (iv) the shareholders having control over the company must have had their domicile in Romania for at least 5 years prior to registration of the sale offer.

The amendments also provide an indirect obligation of not selling the agricultural land for at least 8 years from the date of their acquisition. In case a landlord decides to sell any part of the agricultural land acquired within the last 8 years, such would have to pay a tax of 80% applied to the difference between the purchase and sale price.

The obligation of paying of 80% tax on the difference between the selling price and the purchase price is also applicable in case of direct or indirect transfer of the controlling stake in companies that own agricultural land representing more than 25% of their assets.

M&A INSURANCE

Transaction liability insurance aims to cover financial losses or liabilities arising from claims under the seller's indemnification covenants and from a breach of a seller's warranty obligations. The insured party can be either the seller, seeking insurance for possible buyer's claims arising from any breach by the seller of its indemnity or warranty obligations, or more commonly the buyer. In the latter case, the buyer can directly claim the amount to which it is entitled under the sale and purchase agreement.

Such insurance is rare in Romania. This type of insurance is usually used in larger transactions, when required by banks and in case the buyer is an investment company. As the real estate market matures, interest in transaction liability insurance is slowly growing but still remains low.

In case of any issue related to the title to immovable property, the issuer of the policy pays all the taxes, costs and expenses of the judicial procedures related to the defence of the property right. It should be mentioned that carrying out all legal procedures for the defence of the title to the property (and indirectly to the property right) is usually mandatory. In the situation where, despite these defence procedures, the title to the property is cancelled and the property right is lost, the insurer will reimburse the beneficiary of the policy in the amount provided for in the policy, usually at the level of the purchase price of the property. The compensation concerns only direct damage, which is the loss suffered by the property insured as a result of the insured risk, not the indirect losses, due to the failure to obtain the expected profit or the interruption of the activity.

BUILDINGS ON THIRD PARTY LAND

Following the principle *superficies solo credit*, the owner of a land plot is also the owner of the building erected thereon (principle of inseparability of ownership of land and building).

Superstructure (*superficie*)

One exception from the principle of inseparability of ownership to land and building is a superstructure (*Superficie*); this is where a building is built on third party land and is not intended to remain there for an indefinite period of time. According to the NCC, the maximum period for which a superstructure right can be granted is 99 years. After expiration of this period, the right can be extended. Prior to the construction of the superstructure, the developer will typically enter into an agreement with the owner of the land allowing him to own a building on the third party land plot. In case such agreement does not exist, the right can be obtained by usucaption (acquisitive prescription) and is limited strictly to the surface under the building.

LEASE OF REAL ESTATE

Romanian law permits different types of contracts for the tenancy of land, business premises and buildings.

Tenancy law is governed by the Civil Code of Romania which provides the general rules, conditions and limitations for such contracts. The lease agreements may also be registered in the Land Register, representing encumbrances in relation to the real property.

In general, two main types of lease agreement can be distinguished under Romanian law: (i) land and/or building lease and (ii) lease of agricultural goods (*Arendare*).

The lease of agricultural goods is treated as a specific type of lease agreement, with particular rules, and applies only to the agricultural sector. This type of contract is mainly used to lease land and buildings such as farms, silos, storage facilities, exploitation roads, plantations, platforms and such. Animals and machinery can also be leased based on this type of contract.

In addition to the standard lease contract, the lease of agricultural goods has the following particularities:

- it must be registered with the local administrative authority (City Hall);
- the registered agricultural lease contract constitutes an enforceable title.

The maximum duration of the lease is 49 years. If the parties stipulate a longer period, it is reduced to 49 years. If under the contract (i) the parties have not indicated the lease duration, (ii) have not indicated that they wish to contract for an indefinite period, and (iii) no common or relevant local practices exist, the lease is considered to be concluded for the following terms:

- a term of one year with respect to unfurnished houses or space for the exercise of a professional activity; or
- for the corresponding term for which the rent was calculated, in case of

movable property or in case of furnished rooms or apartments; or
- for the duration of the lease of the immovable, in case of movable goods made available to the lessee for the use of a building.

With regard to the agricultural lease contract, if the parties do not indicate the period or if it is concluded for an indefinite period, the agricultural lease contract is considered to have been concluded for the time necessary for harvesting the fruits that the agricultural goods will produce in the agricultural year in which the contract was concluded.

Land lease agreements registered with the fiscal authorities (for natural persons) or notarized (for natural and legal persons) constitute enforceable titles with regard to the rent due and penalties.

Operating costs

The operating costs of a building are the costs associated with the use and enjoyment of a building and its facilities. Usually those costs are borne by the tenant but the parties can agree otherwise.

Maintenance and repair

The costs related to maintenance and repair are borne by the landlord unless the parties agree otherwise. The landlord is usually obliged to maintain the leased immovable according to the purpose for which it was rented and in good working order.

Effects of change of control

In case of a change of ownership of the real property, the lease contract is binding to the new owner. The parties can agree within the lease agreement that the lease is terminated in case of ownership transfer. The notice period in such case is the two-fold of the initial notice period.

SHORT-TERM LEASE OF REAL ESTATE

The Romanian legislation does not limit the short-term lease and provides only a limit to the maximum duration of the lease, which is 49 years.

Short-Term Accommodation and alternative Temporary Living-Concepts

In recent years, alternative living concepts have emerged in Romania, focused on the large cities, which represent a hybrid form between the long-term letting of apartments and short-term accommodation in hotels. The law does not currently regulate this type of accommodation. However, the government is analysing the market and preparing legislation.

With regard to this type of lease, general fiscal rules apply, in accordance with the person of the lessor (natural or legal person).

PUBLIC PERMITS

In order to construct buildings and authorise specific types of buildings, permits need to be obtained from the corresponding authority.

Depending on the location, type and scope of the building, the number of permits vary and may include permits from the environment authority, defence ministry, cultural authority, fire protection authority, sanitary authority, etc. In addition to the permits required for the building, the operations/businesses performed in those buildings must obtain specific permits in accordance with the activity envisaged.

TAXES AND FEES

Acquisition of land and buildings

The acquisition of real property in Romania is subject to registration fees, tax on real estate transactions and VAT. Transaction and registration fees are composed mainly of land register fees for obtaining the initial Land Register excerpts (EUR 9/parcel), notary fee (0.5–1% from the transaction value), land register fees for the registration of the ownership right in the Land Register (0.15% of the contract value for natural persons and religious organisations (in Romanian: *culte religioase*) and 0.5% of the contract value for legal entities).

Income Real Estate Tax

For the seller, the asset deal triggers the payment of tax on real estate transactions, amounting to 3% of the contract value subtracted from the non-taxable value of 450.000 Lei (~ EUR 95,181.00). All transactions under the contract value of 450.000 Lei (~ EUR 95,181.00) are exempt from income real estate tax.

VAT

19% VAT will apply to the value of the immovable if the seller is registered for VAT purposes in Romania, unless the Seller is:

- subject to a reduced rate; or
- exempt from VAT.

The reduced VAT rate of 5% is applicable for the sale of houses and apartments together with the land on which they are built, as part of the social politics, such as the buildings intended for:

- homes for the elderly and retired;
- orphanages and recovery and rehabilitation centres for children with disabilities;
- first housing acquired by any unmarried person or family with a usable area under 120 sqm, excluding annexes, with a total value under RON 450,000 (net),;
- buildings sold to local authorities destined to be used as social housing or destined to be rented out as homes at the market value.

The sales transactions with respect to the following immovable properties are exempt from VAT:

- constructions/parts of construction and the land on which the constructions are built;
- any other kind of land plot.

The exemption does not apply to:

- new constructions and parts of new constructions (New buildings are any constructions transformed so that its structure, nature or use are modified or, in the absence of these modifications, when the cost of such transformations, except the value added tax, exceeds 50% of the market price of the respective building, exclusive of the value of the land, after the transformation);

However, in case of sales transactions with respect to such constructions, reverse charge of VAT (consisting in reversing the obligation to pay VAT from the supplier/provider, as the general rule provides, to the beneficiary/buyer) is applied.
- building land/parcels; However, in case of sales transactions with respect to such parcels, reverse charge of VAT is applied.

Share Deal

In the case of a share deal where the subject company is the owner of the real property in Romania, income tax of 16% is levied on the capital gain from the transaction. The acquirer is required to calculate, retain (from the purchase price) and transfer the tax at the closing of the transaction.

The taxable base is calculated as follows: sales price minus acquisition costs (including any commissions, taxes or other costs associated with the acquisition of the titles/shares).

VAT does not apply to the transfer of shares.

Owning Land

Building tax

The building tax is payable on an annual basis and is calculated by applying tax rates on the taxable value of buildings.

In the case of a legal entity, the building tax is calculated based on the taxable value (in Romanian: valoare impozabila), which is determined on the basis of:

- the last registered value according to the accounts kept by the fiscal authority;
- the value resulting from a valuation report;
- the final value of the construction works in the fiscal year;
- the value of the buildings resulting from the agreement on which the property right is transferred in the case of buildings acquired during the fiscal year;
- for buildings from a financial leasing, the value derives from the valuation report;
- in the case of buildings for which the tax is owed, the value from the accounts kept by the landlord and communicated to the leaseholder, tenant, the holder of the administration right or right of use.

Legal entities are subject to a local building tax rate established by local councils between 0.08% and 0.2% for residential buildings and 0.2%-1.3% for non-residential buildings. The tax is applied to the taxable value of the building; the tax rate may be considerably increased by the local authorities if the buildings belonging to the legal entity are not periodically valued by a professional appraiser. If a building has not been valued in the last three years prior to the reference year, the tax rate is of 5%.

For non-residential buildings used in the agriculture field, the applied quota is 0.4% from the taxable value (in Romanian: valoare impozabila) of the building.

In the case of individuals, the tax rate is between 0.08% and 0.2% from the taxable value of the residential building, whereby

the taxable value is determined either by the purchase price of the real property or the last valuation report value. For non-residential buildings owned by individuals, the building tax is calculated by applying a quota of 0.2% - 1.3% on the taxable value (in Romanian: valoare impozabila), which is determined on the basis of:

- the value from a valuation report.
- the final value of the construction works for buildings constructed in the last five years.
- the value of the building according to the agreement by which the property right is transferred for buildings acquired in the last 5 years prior to the reference year.

For non-residential buildings used in the agriculture field, the applied quota is 0.4% from the taxable value (in Romanian: valoare impozabila) of the building. If the value of the building cannot be calculated, a 2% quota will be applied to the determined taxable value (in Romanian: valoare impozabila).

Land tax

The land tax is determined by taking into account the number of square meters of land, the rank of the locality where it is located and the area/land use category of the land plot according to the classification made by the Local Council.

Further, with respect to legal entities, the land tax varies depending on the location and category of the land plot and with respect to individuals the amount of the land tax is decided by the Local Council of each administrative region. The tax rate is established annually by the Local Council in correlation with the budget previsions for the year in question.

Encumbrances

The registration fee for registering a mortgage in the Land Register amounts to ~EUR 25 per Land Register object + 0.1% of the amount stated in the mortgage.

Lease agreement

According to the Fiscal Code of Romania, the tax on income derived from rental payments is 10%. The tax rate does not apply to the entire amount obtained from the rent, but to the net income, which is calculated by subtracting the lump sum of 40% of the gross income derived from rent payments in a fiscal year.

OVERVIEW ON FEES AND TAXES

TAXES AND FEES	RATE
Tax on real estate transactions	3% from the amount of the contract value subtracted with the non-taxable value of 450.000 Lei (~ EUR 95,181.00)
Registration of ownership	0.15% of the contract value for individuals and religious organisations (in Romanian: culte regligioase) and 0.5% of the contract value for legal entities
VAT if applicable	usually 10%, reduced rate of 5%, reverse charge or exemption
Registration of mortgage	EUR 25/Land Register object + 0.1% of the amount stated in the mortgage

TAXES AND FEES	RATE
Real Property Tax	0.08% - 0.2% for residential buildings 0.2%-1.3% for non-residential buildings 0.4% for non-residential buildings used in the agriculture field 5% for buildings not valued in the last 3 years – applicable only to legal entities

ENVIRONMENTAL LIABILITY

Romanian environmental liability is governed by several laws and ordinances and no unitary act exists which combines all environmental obligations. All persons (natural or legal) in Romania must comply with environmental obligations and environmental permits are required before building permits are obtained and before performing various changes to the zonal urban planning. Moreover, environmental permits are required for performing commercial activities which suppose a potential pollution hazard.

The main authority responsible for environmental control is the National Agency for Environmental Protection. However, there are several other agencies that exercise an environmental control over a specific field (water, land/soil), and there are agencies that issue permits required for building projects or performing specific commercial activities.

COVID-19 REGULATIONS WITH RESPECT TO REAL ESTATE

In the context of the COVID-19 pandemic, the Romanian authorities have taken a number of measures to support the economic system. The following measures have also had an impact on the real estate sector:

- Government Emergency Ordinance no. 29/2020 (regarding certain economic and fiscal budgetary measures) establishes deferred payments for utility services – electricity, natural gas, water, telephone and internet services, as well as deferred payments for rent for a registered office and secondary offices for small and medium-sized enterprises ("SMEs") that have totally or partially interrupted their activity based on measures imposed by the authorities and that hold the emergency situation certificate, during the state of emergency period.
- Law no. 62/2020 (on the application for rent payment relief during the state of emergency) provides the possibility for economic agents to request the deferral of the rent payment for headquarters and working points, without any interest or penalties. The facility is applicable during the state of emergency period and for one month after the end of this period. Rent deferral can be requested by economic agents for which (i) the activity was suspended or (ii) the income/revenue has decreased by at least 15% in March 2020 compared to the average monthly income/revenue achieved in 2019. The rent must be duly paid by the competent tax authorities for the benefit of the landlords, following that the tenants benefitting from these provisions pay the monthly rents, that have been deferred, to the competent tax authorities, in equal instalments, after termination of the deferral period, but no later than 31 December 2020.
- Government Emergency Ordinance no. 69/2020 (amending the Fiscal Code and introducing new fiscal measures) establishes the reduction of annual taxes on non-residential buildings by 50% for the state of emergency period, if during such period the owners or users of the buildings were forced to completely cease their activity or hold an emergency situation certificate attesting to the partial cessation of their economic activity. Such measure is subject to approval by the local authorities.
- Government Emergency Ordinance no. 37/2020 (on granting certain facilities in relation to the loans granted by credit institutions and non-banking financial institutions to certain categories of debtors) provides that the obligation to pay the due instalments related to the loans, representing capital rates, interest and commissions, granted to the debtors may be suspended by creditors at the request of the debtors for a period between 1 and 9 months, but no later than 31 December 2020. The beneficiaries of the measure are the debtors who have concluded a contract for obtaining a loan that has not reached maturity and for which the creditor did not declare the anticipated maturity, prior to the entry into force of the government ordinance. The eligible debtors (i) must have totally or partially interrupted their activities as a result of the decisions issued by the competent authorities during the state of emergency period and hold an emergency situation certificate or (ii) have registered a decrease of a minimum of 25% of their income or revenue in March, April or May 2020 as compared to the average income generated in January and February 2020 and hold an emergency situation certificate. To benefit from the measure, the debtors should have submitted a request to the creditor no later than 15 June 2020.

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Slovak Republic

Real Estate Law in the Slovak Republic

THE LAND REGISTER

In Slovakia, the Land Register is the sole register that contains all rights with respect to real property, such as ownership, mortgages, easements, rights of first refusal, tenancy rights to land lasting more than five years and others. In addition, it also contains the description of real property as well as its geometric determination. The Land Register is administered by the cadastre department at each district office, which is generally the office where the real property is situated.

The Slovak Land Register is based on several principles, the most important being the principle of registration, the principle of formal and material publicity, the principle of legality and the principle of priority. According to the principle of registration, ownership as well as other rights with respect to real property come into existence, change or cease to exist only upon registration with the Land Register, unless the Slovak Civil Code or other regulations in exceptional cases determine otherwise. The Land Register is a public register, which everybody is entitled to access and to obtain excerpts from.

According to the principle of material publicity, the assumption is that data registered with the Land Register are reliable and binding, unless the opposite was established. The principle of legality confers upon the competent authority an obligation to examine whether the conditions for a valid registration have been met. According to the principle of priority, rights with respect to the same real property are registered on a first-come, first-served basis.

Restitution

In Slovakia the restitution of real property still constitutes a considerable threat to real property transactions and has to be taken into account for every transaction, in particular during due diligence reviews. Restitution claims are directed against the state in order to get back real property or adequate compensation. Restitution proceedings are very long lasting and with uncertain results due to political reasons, therefore out of court settlements are recommended.

ENCUMBRANCES

In Slovakia, the most commonly used encumbrances concerning the real estate are mortgages and easements. According to the above mentioned principle of registration, easements and mortgages can only be effected by the registration with the Land Register, while in accordance with the principle of priority the respective easement or mortgage will be registered on a first come, first serve basis.

Mortgages

As in other European countries, Slovak law understands mortgage as a type of lien against a real property. If a mortgage is established by means of a contract (besides other types of mortgage establishment), the law requires written form for the contract. According to the principle

of registration, the contract itself is, however, not sufficient for the establishment of the mortgage, but the mortgage has to be registered with the Land Register in order to be effective. Under Slovak law, the mortgage is effective against every further owner of real estate if the agreement on the establishment of the lien or a special act does not stipulate otherwise. A mortgage may also be established in relation to a real property which will come into existence only in the future or the existence of which depends on the fulfilment of any conditions or to the real property that the person in question acquires in the future. The mortgagor and the debtor may be different people.

The purpose of the mortgage is to offer the mortgagee a security in case the mortgagor is unable to fulfil his/her obligations towards the mortgagee. In such a case, the mortgagee is entitled to enforce the mortgage and recover the outstanding receivables from the proceeds. In other words, if the mortgagor does not fulfil its obligations, the mortgagee has the right to initiate legal enforcement proceedings by written notification addressed to the debtor and the respective Land Register. Obtaining ownership of the real property directly by the creditor based on a mortgage (*lex commissoria*) is strictly prohibited. The most common ways in which the mortgage is enforced are voluntary auction or freehand sale; however, other possibilities can be agreed directly in the agreement on the establishment of the mortgage in question.

Easements

Easements are understood as legal relationships based on which an owner of real property is obliged to tolerate, act or refrain from acting in favour of a third party. Generally, two types of easements may be distinguished, the so-called in rem and in personam easements.

An in rem easement is connected with the ownership of a real property. An in rem easement binds the respective real property owner and is always transferred together to the acquirer of the respective real property. For instance, the right of passage through third party real property or the drawing of water from a well located on nearby land constitutes in rem easements. On the other hand, in personam easements are granted to a specific person and are not transferred to its legal successor. An in personam easement is for example the right of a person to use an apartment in a family house for the duration of his/her life.

According to the Slovak Civil Code, easements may be established by law, by a decision of a competent authority, by contract as well as on the basis of a last will or an agreement between the heirs or by usucaption. Where an easement is established on the basis of a contract, the law requires written form.

ACQUISITION OF REAL PROPERTY

In general, ownership of real property may be acquired on the basis of purchase, donation or other agreements, intestacy or succession, decision of a state authority or based on other circumstances determined by the law. Generally, real property may be acquired by natural as well as legal entities.

Asset Deal

As far as the contractual acquisition of real property is concerned, the law sets forth two main conditions for a materially effective transfer of ownership rights. First, a written contract is required as the legal basis for the transfer of the ownership to the real property and second, the transfer of the ownership right has to be registered with the Land Register. Hence, the written contract constitutes the "title", while the registration with the Land Register constitutes the "modus". Normally, the registration procedure with the Land Register takes 30 calendar days, yet the parties are given an option to apply for an accelerated procedure, which takes 15 calendar days and is subject to increased administrative fee. The legal effects of the transfer occur on the day on which the Land Register's decision approving the motion for the registration of the changes to the ownership right enters into force; this is the day of its issuance.

Furthermore, real property may also be acquired in the form of a contract pertaining to the sale of the entire enterprise (not composed as a legal entity) which owns the property. However, in such a case the transfer of property rights is effected only by the registration with the Land Register and not only by the mere conclusion of the contract on the sale of the enterprise. The application for registration has to be submitted to the Land Register by the acquirer.

Share Deal

Real property may also be acquired in the form of a share deal, by acquiring the shares of a company which owns the property. The acquisition of real property via a share deal leads to universal succession, which secures for the acquirer all rights and duties associated with the shares and guarantees a continuity of contracts related to the real property. Due to the lack of a new owner of the real property, there is no need to register ownership with the Land Register.

Overview

ADVANTAGES	
SHARE DEAL	**ASSET DEAL**
No problems with legal succession	The only purchase possibility in certain cases, e.g. insolvency
Indirect transfer of all rights and obligations (no acts of transfer needed in respect of individual assets)	Possibility to choose which assets should be transferred
	Liabilities and obligations will not transfer in case of transfer of individual assets

DISADVANTAGES	
SHARE DEAL	**ASSET DEAL**
All liabilities and obligations remain with the company - no clean-up of legacy liabilities	The transfer of singular assets is subject to VAT
Compliance with formal requirements	Legal transition of all the contracts (under labour law, commercial law), liabilities and obligations in case of transfer of the enterprise

DISADVANTAGES	
SHARE DEAL	**ASSET DEAL**
Limitation of transfer possibilities in case the approval of the Board of Directors is required by the Articles of Association or in case of a pre-emption right related to the shares.	Obtaining a general meeting resolution
	Singular succession in case of transfer of individual assets (transfer act needed for each asset)
	Obtaining a shareholder resolution
	Fees in connection with the transfer of certain assets
	Right of the creditors to oppose the transfer of the enterprise, in case such transfer weakens their position.

Adverse Possession – Usucaption

Unlike in other European countries, in Slovakia the acquisition of real property by way of usucaption is not uncommon. One of the main reasons may be the relatively short usucaption period, amounting to only ten years. The period within which the real property was in the possession of a qualified legal predecessor of the current possessor counts against the above mentioned ten year period. Another condition for the acquisition of real property by way of usucaption is that possession was undisturbed during this ten year period. The possessor might be a natural person but also a legal entity. In the interest of legal certainty, the usucaption of real property has to be publicly established, attested and declared. Therefore, a notary has to attest to the possessor's declaration of usucaption. The attestation takes the form of a notarial deed. The notarial deed is subsequently forwarded to the Land Register that performs the registration of the acquisition of the real property by usucaption. Where the prior owner objects to the veracity of the notarial deed in connection with the satisfaction of the conditions for the real property acquisition by usucaption, such disputes need to be resolved by the competent court.

M&A INSURANCE

In general, transaction liability insurance aims to cover financial losses or liabilities arising from claims under the seller's indemnification covenants and from a breach of a seller's warranty obligations. The insured party can be either the seller, seeking insurance for possible buyer's claims arising from any breach by the seller of its indemnity or warranty obligations, or more commonly the buyer. In the latter case, the buyer can directly claim the amount to which it is entitled under the sale and purchase agreement.

Transaction liability insurance is not widely used in Slovakia for real estate transfers, nor is such insurance specifically regulated by the law, which provides only a general regulation of the damage insurance applicable for any kind of damage.

ACQUISITION OF REAL PROPERTY BY FOREIGNERS

Since the accession of Slovakia to the European Union, the strict restrictions on acquisition of real property by foreigners have been substantially relaxed. Foreigners are now allowed to acquire real property without limitation, except for agricultural land, which may not be acquired by foreigners from those states, that are not members of the EU and which do not allow Slovak citizens or companies to acquire agricultural land.

BUILDINGS ON THIRD PARTY LAND

Peculiarities concerning ownership rights to buildings

Unlike in other countries of continental Europe, the Slovak Civil Code does not follow the Latin principle of superficies solo cedit. Thus, the land and the building situated on it are considered two separate objects, each subject to (different) ownership. Accordingly, the owner of the building and the owner of the land where the building is situated on may be two different persons. In contrast to land which is always considered as immovable property, the Slovak Civil Code does not define all buildings as immovable property, but only those buildings which are firmly connected to the ground.

However, the Slovak Civil Code does not contain any definition of what a building is. Buildings are defined in certain ground planning and building regulations. These regulations consider different characteristics, such as the purpose, duration and structural engineering of the construction concerned. It should be noted that these regulations examine whether an object is a building or not, irrespective of its connection with the ground. For that reason, it has to be carefully examined in real estate transactions whether the building is connected with the ground as provided for by the Slovak Civil Code, otherwise such a building will not be considered as a real property but as a movable asset.

LEASE OF REAL PROPERTY

Residential Premises

The Slovak Civil Code sets forth a general regulatory regime with respect to objects that may be the subject of a lease. Additionally, it also contains specific provisions that apply to the lease of residential premises. These provisions are specifically adjusted to protect tenants of apartments, are mostly mandatory and therefore cannot be derogated by the contractual parties. Thus, the provisions on the lease of apartments lay down specific requirements for lease agreements as well as restrictions on the termination of a lease agreement. Unless the parties reach an agreement, the lease agreement may be terminated only for the reasons determined by the law.

Furthermore, the provisions on the lease of residential premises also set forth the obligations of the landlord to hand over the apartment in a condition for proper use and provide the tenant with full and undisturbed enforcement of rights related to the use of the apartment. Small repairs in the apartment related to its use and

costs related to common maintenance are borne by the tenant, unless otherwise agreed in the lease agreement. In addition, the Act on Lease and Sublease of Non-Residential Premises governs all other leases of space. Non-residential premises are defined as rooms or a set of rooms designed for non-residential purposes according to the determination of the building authority or apartments which may be used as non-residential premises based on consents granted by the relevant authority. In accordance with the Act, non-residential premises may be leased only for the purposes they have been built for.

Similar to the specific provisions on the lease of residential premises contained in the Slovak Civil Code, the Act on Lease and Sublease of Non-Residential Premises sets forth mandatory provisions on the requirements with respect to basic features of the lease agreement which cannot be derogated from, otherwise the contract is deemed invalid. Limitations on termination of the lease agreement are also included.

SHORT TERM LEASE OF REAL ESTATE

The increased mobility of the workforce combined with the need to ensure adequate housing for workers encouraged the Slovak legislator to adopt the Act on the Short-Term Lease of Apartments, which regulates the lease of residential premises.

In particular, the regulation of the short term lease of apartments is characterized by flexible terms of termination of the lease, since, unlike the regulation of ordinary lease, it allows the lessor and the lessee to establish by agreement the reasons for which the lease can be terminated and, moreover, it releases the lessor from the duty to provide an alternative apartment to the lessee after the termination of the lease. Such a lease may be concluded solely for a definite period, i.e. for no more two years. A short-term lease can be twice prolonged for a further two years based on the agreement of the contractual parties under identical conditions.

It is also notable that the law imposes on the lessor the duty to be registered for income tax purposes to ensure the taxation of income from short-term leases; the non-fulfilment of this obligation is sanctioned with the application of the provisions of the Civil Code regarding the termination of a lease by a landlord, which are stricter compared to the termination of a short term lease as regulated by the Act on the Short-Term Lease of Apartments.

Business Premises

Similar to the lease of residential premises, the lease and sublease of non-residential premises is governed by the Civil Code as well as a specific Act on Lease and Sublease of Non-Residential Premises. Based on the nature of the contracting parties, e.g. if both contacting parties are legal entities, certain aspects of the contract, such as damage compensation, contractual penalties or statutory limitations, might be governed by the Commercial Code. Non-residential premises are defined as rooms or a set of rooms designed for non-residential purposes according to the determination of the building authority or apartments, which may be used as non-residential premises based on permits granted by the relevant authority. In accordance with the Act, non-residential premises may be let only for the purposes they have been built for.

For the most part, the Act on Lease and Sublease of Non-Residential Premises lays down mandatory provisions on the requirements with respect to basic features of the lease agreement, which cannot be deviated from, otherwise the contract would be deemed invalid. A non-residential lease agreement may be concluded for a fixed as well as an indefinite term. The duration of the lease agreement also influences the termination of the agreement.

If a lease agreement was concluded for an indefinite term, both the landlord and the lessee are entitled to terminate the agreement without stating any reason, unless otherwise provided in the lease agreement. Unless otherwise agreed, the notice period is three months.

On the other hand, if a lease agreement was concluded “only” for a fixed term, it may be terminated for the causes set forth in the Act. It is unclear from the wording used to formulate the provision whether or not these causes can be changed or altered by mutual agreement of the contracting parties. Yet, there is case-law that shows that these causes are mandatory and cannot be deviated from.

Operating costs and rent

Neither the Civil Code nor the Act on Lease and Sublease of Non-Residential Premises contains provisions regulating the duty to bear operating costs or under which conditions these costs should be borne by the landlord and under which by the lessee. Therefore, this topic should be contractually agreed between the parties.

In this context, it is worth pointing out that according to the Act on Lease and Sublease of Non-Residential Premises an agreement on rent, its maturity and payment conditions form a constituent element of a lease agreement. Since this is very rigidly interpreted, a lease agreement, which lacks payment conditions (via bank transfer or in cash) lacks one of its constituent elements and is, therefore, considered null and void. The same applies also in cases where the parties agree on a lump sum rent (rent also includes fees for electricity, water, gas, etc.). Such agreements are not considered valid agreements on rent and the entire lease agreement is considered null and void as well. Therefore, caution is needed when concluding a lease agreement.

Maintenance and repair

Unless otherwise provided in the lease agreement, the landlord is obliged to hand over the leased premises in such a condition as contractually agreed or in such condition that the premises are fit for the usual usage. According to the Acton Lease and Sublease of Non-Residential Premises, the landlord is also obliged to maintain the leased premises in such condition, which renders them fit for usual usage during the term, as well as to ensure that all services, whose provision is related to their usage are duly provided. The landlord also has to bear all costs related to the above stated obligations, unless

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otherwise agreed.

On the other hand, the lessee is obliged to bear all costs related to ordinary maintenance of the leased premises.

Effects of change of control

Lessee
Neither the Civil Code nor the Act on Lease and Sublease of Non-Residential Premises regulates the question of change of control in the company which is the lessee and its influence of the lease agreement. Without a contractual agreement, a change of ownership of the lessee does not have any effects on the lease and its terms.

Owner
In cases of a change of ownership, the new owner enters into the legal relationship on the side of the landlord and thus is bound by all rights and duties arising out of the lease agreement. On the other hand, the lessee is granted a termination right in case of a change of ownership of the landlord. While in practice this extraordinary termination right is usually excluded, it is not clear whether such an exclusion of the termination right is legally permissible.

PUBLIC PERMITS

In Slovakia, a construction permit needs to be obtained from the respective authority to realize a building project of any kind, irrespective of its structural engineering, purpose and duration of existence. A permit is also required in case of changes to a building, particularly in the case of annexes, extensions and adaptations. The permit is valid for two years from the day of its effectiveness, unless in justified cases the respective authority issues a permit with a longer validity. Thus, the holder of the permit has to commence construction works within two years from the date of the permit, otherwise the permit becomes invalid and a new permit needs to be obtained . Subsequently, a permit authorising the use of the building has to be obtained in order for the building to be put into operation.

TAXES AND FEES

Real estate taxes in Slovakia are divided into three types, i.e. land tax, building tax and residential/non-residential premises tax in residential houses.

There are no transfer taxes in Slovakia. Nor are there any stamp duties or similar taxes on real estate transfers in Slovakia. Registration of real estate transfers is subject to minor administrative fees payable upon registration.

The taxes in question are paid on an annual basis, whereas the calculation of tax is annually determined by the generally binding decree of the municipality. However, the tax rate cannot exceed certain maximum rates set forth by the relevant legal regulations. In addition to its location, the particular amount of tax also differs based on the nature and value of the real estate. Hence, different rates apply to agricultural estates, estates determined for building purposes, residential premises, non-residential premises, and business premises, etc. Real estate taxes were increased significantly in 2020.

Gains on real estate transactions are subject to income tax on the seller's side. The income tax rate for individuals in 2020 is 19% or 25 % and for legal entities is 21% applicable for the taxpayers with revenues higher than EUR 100,000 and a reduced rate of 15% is applicable for taxpayers (including self-employed individuals) with revenues up to EUR 100,000 for the relevant tax period.

The most significant exemption from taxation applies to real estate owned by the seller for a period longer than five years, in which case the sales margin is not subject to taxes. This similarly applies to the transfer of real estate acquired by the seller by way of inheritance or donation from the previous owner who owned the real estate for a period of at least five years.

Both for the registration of ownership as well as for a mortgage, the same registration fee for the Land Register applies. The registration fee amounts to EUR 66 for ordinary registrations and EUR 266 for expedited registrations. Reduced rates of EUR 33 or EUR 130 apply in the case of electronic applications.

OVERVIEW ON FEES AND TAXES

TAXES AND FEES	RATE
Real Estate Transfer Tax	There is no Real Estate Transfer Tax in Slovakia

TAXES AND FEES	RATE
Registration of ownership	EUR 66 or EUR 266 (accelerated procedure within 15 days) In case of electronic application EUR 33 or EUR 130 (accelerated procedure within 15 days)
VAT (in case of VAT taxpayers)	20% of consideration Transfer of real estate within five years from its construction (i.e. issuance of first use approval/permit) are subject to 20% VAT. Transfers of real estate after five years since its construction (i.e. issuance of first use approval/permit) are exempt from VAT, however deduction of VAT in case of transfers of residential properties is limited. Transfer of land is exempt from VAT except for building plots and land transferred together with
	EUR 0.6030 per m2 (average tax rate in 2020 applicable to land plots for building purposes) 0.493 EUR/m2 (average tax rate in 2020 applicable to apartments) -0.0022 EUR/m2 (average tax rate in 2020 applicable to agricultural land)
Registration of mortgage	EUR 66 or EUR 266 (accelerated procedure within 15 days) In case of electronic application EUR 33 or EUR 130 (accelerated procedure within 15 days)

TAXES AND FEES	RATE
Real Property Tax (depending on the nature, location and value of the real property)	Applicable to all owners (private individuals and companies, real properties used for education, scientific research or religious purposes are however exempted). The tax is generally based on the surface area of the land and building, the number of floors of a building, usage and location. The rates are set out by the local municipalities within the limits provided by the law and vary significantly. EUR 3.9073[1] per m2 (average tax rate in 2020 applicable to administrative and business premises)

ENVIRONMENTAL LIABILITY

The relevant Slovakian regulatory provisions (e.g. Waste Act) primarily provide for the liability of the polluter (e.g. possessor of waste) if such polluter is duly identified in the course of the proceedings performed by the state authority, otherwise Slovak law provides for subsidiary liabilities of the owner, administrator or lessee of real property who are in general liable under the condition that he voluntarily tolerated pollution, has the benefit from the pollution or neglected to implement appropriate measures against pollution.

COVID-19 REGULATIONS WITH RESPECT TO REAL ESTATE

On 17 June 2020, new amendment to Act No. 71/2013 Coll. on subsidises within the powers of the Ministry of Economy of the Slovak Republic came into force as a direct result of the negative impacts of the measures adopted to prevent the spread of COVID 19. According to this amendment, the government will provide subsidies for rent payments to those tenants whose operations have been closed for a certain time due to COVID 19.

Only natural persons – entrepreneurs – and legal persons are entitled to this form of rent subsidy. The said amendment also specifies what kind of premises are eligible for the subsidy: i.e. (i) non-residential premises in which the tenant sells goods or provides services to the end consumer, including related services and storage areas and (ii) market places. To obtain the rent subsidy payment, the tenant´s right to use the object of the lease must have arisen before 1 February 2020.

The amount of the rent subsidy depends on the amount of the discount on rent based on an agreement between a landlord and tenant, but it cannot be more than 50 % of the monthly rent. If, for example, the landlord provides the tenant with 20 % discount on the rent, the government may also contribute 20 % of the amount of monthly rent to the tenant. The subsidy does not include payments for operating costs, utilities and VAT and only pertains to the payments for the right to use the property. The subsidy can be obtained only for the time period during which it was prevented from properly using the object of the lease.

The application for the rent subsidy must be provided to the tenant on the basis of an application submitted by the landlord on behalf of the tenant. If approved, the government shall notify the landlord and tenant electronically and send the relevant amount of rent directly to the landlord´s account. The rent subsidy can be applied for only via electronic submission, which must include qualified electronic signatures of both tenant and landlord. The deadline for submission of applications for the rent subsidy was 30 November 2020. Applications for the rent subsidy during the second wave of the COVID-19 pandemic must be submitted between 16 December 2020 and 31 March 2021. After this period it will no longer be possible for entrepreneurs in Slovakia to submit an application for the rent subsidy.

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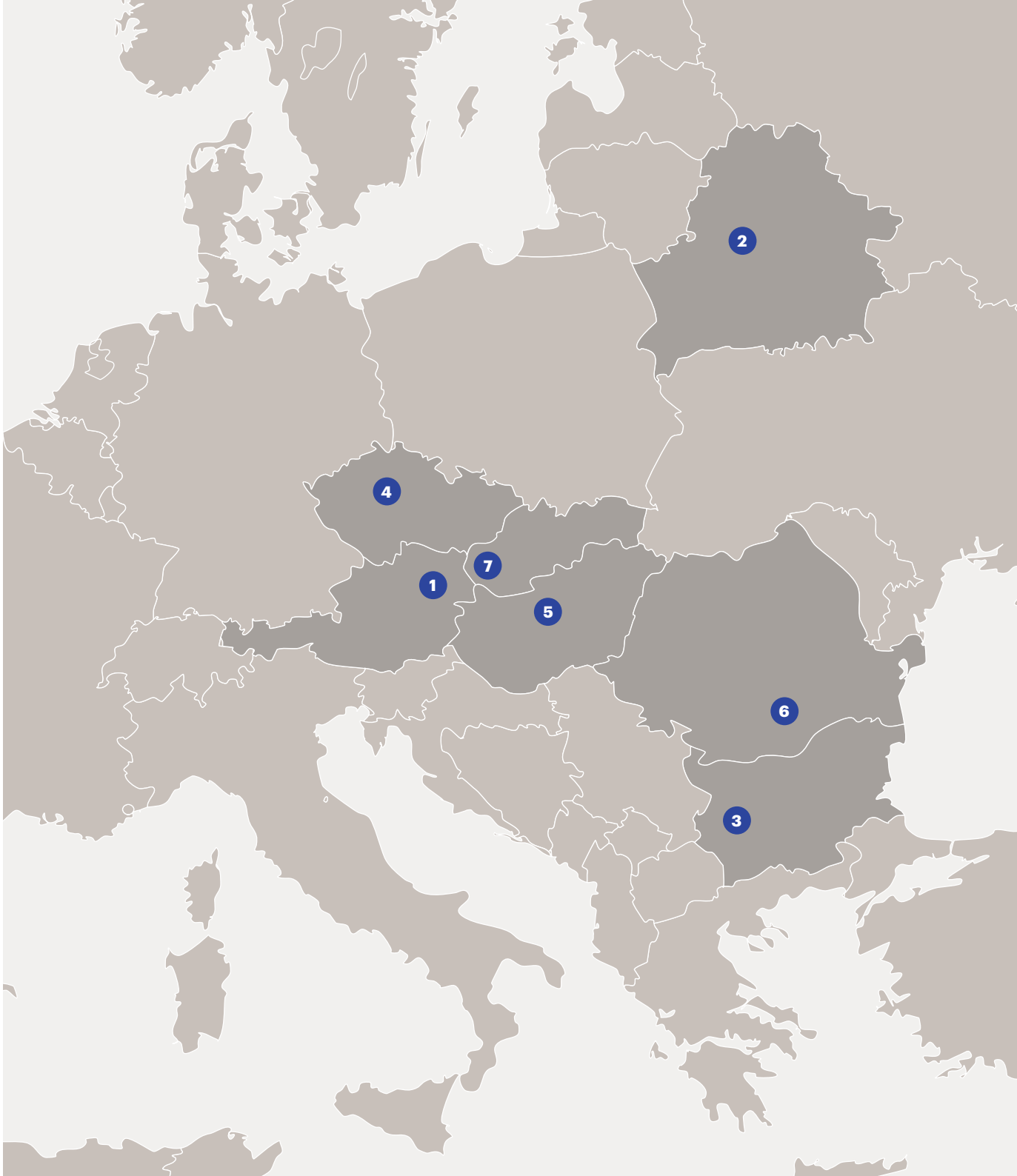

Your notes

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