CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2025

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Letters to the Editors:

If you like what you read in these pages (or even if you don't), we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at: press@ceelm.com

TABLE OF CONTENTS

CHAPTER CONTENTS

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1 Real Estate Ownership

1.1 Legal Framework

In the Constitution of the Republic of Albania (Constitution), it is stipulated as one of its essential principles, that the right to private property (which includes the concept of real estate ownership) is guaranteed and protected by the Constitution. Furthermore, private real estate property is equally protected by law as state-owned property. The real estate property can be gained through donation, purchase, or any other means provided in the Civil Code and specific laws. The major means for gaining real estate property pursuant to the Albanian legislation are through contract, inheritance, adverse possession, connection, and a mixture of property, processing, etc.

Moreover, the Constitution provides that real estate property can be expropriated or restricted only for public interests and against fair compensation. The process of expropriation for public interests is regulated by means of Law No. 8561 dated December 22, 1999, On expropriation and taking into temporary use of private property for public interests as amended, along with a set of secondary legislation which thoroughly regulates the expropriation process.

Pursuant to the Civil Code the property is the right to possess, enjoy, and freely dispose of the property within the limits defined by law. Obviously, the Real Estate owners have broader rights in comparison with other categories of beneficiaries from real rights (i.e. lease, usufruct, etc.) which usually have the right to possess and enjoy the real estate property in accordance with the contract but do not have the right to dispose of the property.

Recently, a major development has occurred regarding the possibility of privatization of state-owned real estate for the purpose of investing. In this sense, Albania has adopted or updated a series of legislation aiming to promote foreign investments through the possibility of granting long-term use, with favorable conditions (the so-called "1 Euro Contracts for 99 years") or transfer in property of private investors of state-owned real estate. Such legislation encompasses Law No. 9967, dated July 24, 2008, as amended, known as Law on Privatization, and the Council of Ministers Decision No. 54, dated February 5, 2014, On determining the criteria, procedures, and means of granting the state properties through lease, emphyteusis or other contracts, as amended, the Law no. 55/2015, dated May 28, 2015, On strategic investments in the Republic of Albania, as amended, which is completed in the specific field of touristic investments by the Law no. 93, dated July 27, 2015, On Tourism, as amended, and by the Law no. 71, dated October 17, 2019, On Albanian Investments Corporate, for other investment projects.

The Albanian legislation has some restrictions in connection with the acquisition of lands from foreigners. More specifically, it is not allowed the purchase agricultural lands, woodlands, meadows, and pastures from foreigners. However, such restrictions can be overcome through the acquisition or establishment of Albanian legal entities, which can be made by foreigners without limitation, and which in turn can acquire or purchase such land without restrictions. Restrictions are applicable also for the purchase of lands within the city areas. The foreigners are able to acquire such lands in the case they lease the land with the purpose of investment and perform an investment which according to the construction permit, exceeds three times the value of the land determined by Council of Ministers Decisions. The same as with agricultural land, even in this scenario, foreigners may acquire land by establishing an Albanian legal entity.

1.2 Registration of Ownership

The ownership of real estate is duly registered in the State Cadaster Agency which organizes and maintains the real estate registers for privately-/state-owned immovable properties and in which are registered the real estate rights over such properties. The activity of the State Cadaster Agency is regulated through Law No. 111/2018 On the Cadaster. The State Cadaster Agency is under the direct supervision of the Prime Minister's Office.

All private or state-owned properties should be registered in the State Cadaster Agency. With the entry into force of Law No. 111/2018 is supposed to be finalized the whole process of digitalization of the cadastral registers/maps and conclude the process of the initial registration of all the real estate properties. This means that while digitalizing all the existing real estate properties, the State Cadaster Agency scrutinizes the legality of the property registration and invites the owner to remedy any deficiencies that might be noted. This process decreases considerably the risk of having overlaps of properties and overlaps of cadastral maps.

Upon successful completion of the registration process of the relative immovable property, the State Cadaster Agency issues the Certificate of Ownership, the Property Card, and the Cadastral Map per each immovable property, which constitute the evidence of effective ownership of such immovable property.

Pursuant to the Civil Code, the following transactions must be registered in the State Cadaster Agency:

- contracts for the transfer of the ownership of the real estate and the acts for their voluntary separation;
- contracts through which are established, recognized, amended, or cease to produce effects real rights over the properties, such as usufructs, usage, emphyteusis, easements, and other real rights;

- legal acts by means of which are waived the above real rights;
- legal acts through which a commercial entity was established which has under ownership a real estate or enjoys other rights in rem over these properties; and
- court judgments related to real estate matters and the bailiff actions for the seizure or sale of real estate property in auction.

1.3 Publicity of Real Estate Register

The information in the real estate registry is not publicly available. Such information may be accessed by the relevant state authorities, prosecutions, or courts based on a valid legal reason. Also, the public notaries have access to the real estate register however this information can be used and/or processed by them only for reasons of effectuating transactions with real estate properties.

1.4 Protection of Ownership

Any transaction with a real estate property (at least the ones specifically provided in the law) should be registered in the State Cadaster Agency, however, such registration is not always a condition precedent for the validity of the transaction. The Law on Cadaster provides that any transaction or legal action that is necessary to be registered in the real estate registry should be registered within 30 days from the execution of the agreement, otherwise, a fine of approximately USD 30 per day is applied.

The entries of the real estate registry provide a legal presumption of the existence of the real estate rights over the relative immovable property, which is considered valid until a court of law has stated otherwise.

The Constitution provides that property rights are protected by law and real estate rights can be deprived only upon due process of law. While the Civil Code specifically regulates the procedural means for the protection of real estate rights. More specifically such modalities are the claim for restitution of property, the claim for the cease of violation of property (actio negatoria), and the claim for the determination of the boundaries. Basically, these procedural means are the available modalities provided in Albanian law for remedies against unauthorized disposal or use of real estate.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

In the Albanian jurisdiction, the most encountered modality of real estate disposal is the asset deal in which the owner sells to the investor the real estate property through a Sale Purchase Agreement (SPA). In the case the real estate belongs to a commercial entity, the investor may purchase the company which is the owner of the real estate asset (share deal). However, the share deal is rarely used as a modality of transfer of real estate and is used in cases when the main interest of the investor is the company (owner of the real estate) and not the real estate asset itself.

From the perspective of Albanian law, the purchase of real estate through asset deals is more a straightforward process in comparison with the share deal. In these cases the buyer usually conducts real estate due diligence on the ownership documents and if necessary technical measurements of the property and it is conducted the process of signing the SPA in front of the public notary, who performs afterwards the registration of the SPA in the State Cadaster Agency and obtains the ownership certificate in the name of the buyer.

While in the share deal, the investor should perform in addition to the real estate due diligence also a full legal and financial due diligence which is usually a time-consuming and expensive process. The SPA for the share deal must cover in addition to the real estate matters also other important elements necessary for the purchase of the company.

2.2 Share Deal

It has to be noted that in Albania, to the best of our knowledge are almost nonexistent companies that have as their scope of activity the ownership of a real estate asset and the management of such an asset. For this reason, the share deal is very rarely used and practically it is encountered in case the main interest of the investor is the acquisition of the company and not of the real estate.

As a matter of practice, a share deal process starts with full financial and legal due diligence which may be produced by the seller and/or the buyer as the case may be. Afterward, the parties negotiate the terms and conditions of the SPA by means of which is basically transferring the ownership of the shares from the seller to the buyer. The SPA is filed with the Business Registration Center and the shares are transferred to the buyer. In the share deal, if the name of the company is not changed, then no other bureaucratic procedures are performed with the State Cadaster Agency for the RE. In the case the name of the company is changed, then the SPA for the share deal is deposited to the real estate registry and another ownership certificate is issued with the new name of the company.

The main pieces of legislation used for this kind of transactions are the Civil Code, Law No.9901 dated April 14, 2008, On Commercial Entities and Entrepreneurs, and Law No.131/2015 On the National Business Center.

In the transaction document (SPA), the risk is transferred to the purchaser however usually the SPA contains the necessary representations and warranties in order to protect the purchaser's rights to the maximum extent possible.

2.3 Asset Deal

As explained above, the asset deal is a rather more simple transaction in comparison with the share deal. The transaction is focused almost exclusively on the real estate and the buyer should thoroughly review the property documents. Depending on the value of the asset, real estate due diligence would be highly recommended for the Albanian jurisdiction, which might significantly mitigate any potential risk related to the property documents.

The transaction document for the purchase of real estate (SPA) must be signed in front of a public notary (thus must be in notarial form) and the latter performs all the necessary procedures for the registration of the SPA with the State Cadaster Agency. Prior to the execution of the SPA, the public notary verifies electronically that the real estate is free of any liens, restrictions, pledges, and encumbrances and afterward collects the signatures of the buyer and seller in the SPA. The latter is filed with the State Cadaster Agency for registration only in the case the buyer, deposits in the escrow account held by the notary, the full sale price. After the Cadaster transfers the ownership of the real estate to the buyer and issues the Ownership Certificate (within a maximum of 30 days), the sale price is transferred to the seller's bank account.

The public notary fees are paid in accordance with a joint instruction of the Ministry of Justice and of Finance and are calculated as a percentage of the sale price.

The applicable legislation for the asset deal is the Civil Code, Law No. 110/2018 On the public notary, Law No. 111/2018 On the cadaster, and other important legislation and secondary legislation depending on the nature of the real estate.

2.4 Disposal Process

According to the Civil Code, the SPA must be in written form and entered into in front of a public notary, who follows the procedure for the registration of the SPA with the State Cadaster Agency as explained in section 2.3. above.

There are no specific consents, approvals, or proceedings for real estate disposal unless the real estate is mortgaged in favor of a financial institution or is seized by the tax authorities or a bailiff. In this scenario, the transaction can be performed only in the case the tax obligation or the debt is duly paid, and the seizure order is lifted.

2.5 Registration of Change of Ownership

Please refer to Section 2.3.

2.6 Risks To Be Considered

As a matter of principle, there are no hidden, pre-emptive, or first-refusal rights to real estate. However, in the case, that the real estate is under the co-ownership of two or more owners, and one of them would like to sell the property, the other co-owners have the pre-emption right for the purchase of a share of the property belonging to another co-owner who is selling the property.

The Civil Code provides that the unsatisfied Purchaser can claim remedy of defects in the case within 10 days from the moment of noticing such defects. In any case, such defects must be claimed within two years from the handing over moment. In the case the building is constructed agreement, such deadline can be extended up to 10 years from the handing over moment.

3 Real Estate Financing

3.1 Key Sources of Financing

The classical and most encountered practice of sources of financing in Albania is the mortgage. This activity is conducted through commercial banks and is an activity regulated by Law No. 9662 dated December 18, 2006, On the Banks in the Republic of Albania, as amended, and closely supervised by the Bank of Albania (regulatory authority) which has adopted a significant number of regulations which are binding for the commercial banks. In addition, the mortgage is also specifically regulated in the Civil Code.

A recent trend arising in real estate financing is also their purchase through a financial lease, with a transfer in ownership option. In this case, the financial institution acquires the real estate on behalf of the buyer and leases to him during the period agreed, and at the end of the lease, the buyer has the right to buy the property at the agreed price. The advantage in this case is that, considering that the financial institution remains the owner of the immovable property during the lease, has more security to provide financing also in cases when the mortgage option would not be viable.

The financial lease is regulated by Law No. 9396, dated May 12, 2005, On Financial Lease, as amended, as well as by the Civil Code.

3.2 Protection of Creditors

The mortgage is the main type of security in real estate financing. The Civil Code defines the mortgage as the real right that is placed over the debtor's property in favor of the creditor in order to ensure the fulfillment of an obligation. Another modality for the protection of creditors which is frequently used in real estate financing is the guarantee which can be a personal guarantee and/or a corporate guarantee. In addition, there could be pledges or securing charges agreements placed over movable assets which could be used as securities in real estate financing. Usually, the pledges and securing charges are taken as additional guarantees to the mortgage in real estate financings.

4 Real Estate Taxes

4.1 Transfer Taxes

Individuals are subject to a personal income tax at a rate of 15% applicable on the capital gain (i.e., the difference between the registered value of the immovable property and the sale price). However, it should be emphasized, that the sale price cannot be lower, for tax purposes, than the references issued by the state authorities.

Legal entities (in addition to the corporate income tax in the case the seller is a corporate/entrepreneur) are also subject to the local tax on the transfer of immovable properties. In the case of a sale of land, the applicable tax is at the rate of 2% of the sale price. In the case of a sale of a building, the tax is calculated based on the surface of the building and its location (the tax may vary from ALL 100 to ALL 2,000 per square meter).

4.2 Specific Real Estate Taxes

Ownership of immovable property is subject to the annual tax on immovable properties based on the below categories:

- Buildings with residential purposes – 0.05% of the registered value or of the minimum legal value in case the prior is lower;
- Buildings with commercial purposes – 0.2% of the registered value or of the minimum legal value in case the prior is lower;
- Agricultural Land – from ALL 700 to ALL 5,600 per year, depending on the location; and
- Construction Land – from ALL 0.14 to ALL 20 per square meter, depending on the location and purpose of use.

5 Condominiums

5.1 Legal Framework for Condominiums

Condominiums do exist in the Albanian jurisdiction and are regulated by Law No. 10112 On the administration of co-ownership in residential buildings. The law aims to regulate the legal relations in the field of administration of co-ownership in residential buildings with two or more owners, land and ancillary facilities, which are in compulsory co-ownership, determination of subjects, relations between them and with third parties, rights, and obligations of mutual, as well as the relevant sanctions, in the case of non-fulfillment of these obligations.

In units where there are two or more owners, the co-ownership relations between the owners are regulated in accordance with the provisions of the Civil Code, the law mentioned above, and the Council of Ministers Decision (CMD) No. 447, dated June 16, 2010, on Approval of the standard regulation for the administration of co-ownership in residential buildings, which establishes general rules on the administration and maintenance of condominiums in residential buildings.

Law No. 10 112 On the administration of co-ownership in residential buildings specifies that the deed of co-ownership shall be registered with the immovable property registration office, under whose jurisdiction the residential building is located, in accordance with the laws and rules of immovable property registration of the Civil Code. The co-ownership title is registered in the name of the creator.

5.2 Rights and Duties of Co-Owners

The rights and obligations of the co-owners are focused on the maintenance of the condominium, informing the co-owners on the changes or damages that may occur, the monetary investment needed for the building as well as participating in decision-making on the administration of the condominium in co-ownership. According to Law No. 10 112 For the administration of co-ownership in residential buildings, the owner of the condominium has the right to:

a) to request from the other co-owners, in the obligatory co-ownership where he belongs, or from the users of these special units not to infringe the use and enjoyment of indivisible objects, as well as to request compensation or correction of the damage, when the damage is caused by their actions;

b) participate in decision-making;

c) be informed by the assembly or the administrator/management company about the decisions taken in his absence;

d) to be regularly informed by the administrator and by the assembly about the use of the administration fee;

e) to be informed by the administrator/management company about the non-payment of the administration fee by other owners;

f) to submit to the assembly proposals for the administration of the residential building.

Along with these rights, the owner is obliged to:

a) to respect the norms of ethics and coexistence, defined in the regulation of building administration;

b) not to hinder other co-owners in the enjoyment of objects that are in compulsory co-ownership;

c) to pay the administration fee even in the cases when he does not live or has rented the unit;

d) to allow inspections and repairs of the common property within the unit owned by him.

The co-owners of the units, including the "creator of the

co-ownership" as long as he owns one or more units, represent the Assembly. In the first meeting, the assembly elects the board, determines the mandate, and decides the amount of the administration fee.

5.3 Liability of Co-Owners

The co-owners will be liable to other co-owners, the associations, and/or third parties related (e.g. the occupants of the condominium) for any action they take on the building or damage caused to it that violates their rights over the condominium.

The CMD no. 447, dated June 16, 2010, on Approval of the standard regulation for the administration of co-ownership in residential buildings, presents a more extensive relationship between the co-owners, mentioning the norms related to the maintenance of the building, the physical stability of the building, the safety of life and public health, ethical norms of coexistence which, of course, are mandatory to the co-owners. The maintenance of quietness, the rules of usage of common areas, restrictions on the usage of individual property, and the keeping of pets are the key points that the article consists of as an integral part of the specific regulation of each co-ownership, regardless of the specifics of co-ownership.

5.4 Rights and Duties of Condominium Associations

The association of the condominium performs the tasks defined in the contract entered into between the co-owners or in the agreement with the board, depending on the chosen form of administration. According to Law No. 10 112 For the administration of co-ownership in residential buildings, there are two forms of condominium administration which consist of the administration through a condominium association or an administrator (physical person) who may be one of the co-owners or an outsourced person/entity. Whichever form is chosen for the condominium administration, shall be registered in the Administrators Book (Register) at the municipality, under which jurisdiction the individual/association exercises this activity.

Condominium associations, in addition to the administration service, can cover with their activity also maintenance services, if they have the necessary qualification for specific maintenance activities, such as maintenance of elevators, restoration or reconstruction of facades or interiors, and any other type of activity, which requires special qualification, in a certain field. As mentioned above in Section 5.2., the assembly of co-owners approves the criteria and costs of administration, the administration fee, as well as the manner and time of its payment for each co-owner, which will finance the administration activity.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

The Civil Code provides that the lease agreements concluded for a period of more than one year must be in written form. In this case, the written form is mandatory only for probatory purposes (ad probationen), this means that the lease agreement is valid but it cannot be proved in the court through witnesses or any other means. According to Article 197 of the Civil Code, the lease agreements used for renting real estate for a period of over nine years must be mandatorily executed in front of a public notary and registered with the State Cadaster Agency.

The Albanian jurisdiction does not make major distinctions between the properties leased for commercial reasons and the ones leased for other purposes i.e., living purposes, except for the duration, which can be of a maximum of 5 years in case of a residential lease, and up to 30 years in case of commercial lease. In any case, the legislator leaves it to the discretion of the parties to freely insert provisions in the lease agreement that might be necessary for the lease of commercial real estate.

The usual content of a lease agreement in Albania includes inter alia the description of the leased property, the term of validity, the lease reason, the modalities and purpose of exploitation of the real estate, the rights and obligations of the parties, termination clause, dispute resolution mechanism, etc.

A recent trend in the commercial lease of immovable properties relates to the possibility of having the lease price connected with the performance of the commercial activity. In this case, the parties agree to a base lease price, which is afterward variable based on the performance of the commercial activity. This allows for modulation of the lease price based on the fluctuation of the performance of the commercial activity.

6.2 Regulation of Leases

As a matter of principle, the rules for lease do not substantially differ according to the type of property, however, there is a certain categorization in the Civil Code that makes a distinction between the real estate used for agricultural purposes and other real estate used for different purpose, such as residential purpose and/or commercial purpose.

On the other hand, there are few mandatory provisions in a commercial lease that cannot be contractually excluded. One of these cases relates to the maximum duration of the commercial lease which cannot exceed 30 years. In this case, should the parties agree on a different and longer lease duration, such provision will be considered ineffective, and the maximum duration of the lease shall be in any case the maximum duration provided by the Civil Code.

6.3 Registration of Leases

Pursuant to Article 197 of the Civil Code, all the lease agreements for real estate properties, entered into for a period of more than nine years must be registered in the State Cadaster Agency. The latter registers documents (in this case the Lease Agreement) only in notarial form, which means that it is mandatory to be executed in front of a public notary in Albania. This registration is performed in the relevant section of the real estate register, according to the provisions of Law no. 111/2018 On the Cadaster.

It is important to note that, such registration is a mere condition of publicity of the lease agreement and not a requirement for its validity. The lease agreement will be in any case valid, but its registration is required for its opposition to third parties that may acquire in the meantime the leased property.

6.4 Termination of Leases and Renewals

The lease agreement may contain a specific term of validity, or the parties may not stipulate any term at all. The lease agreement with a determined term, automatically terminates at the end of the expiration period, without the need that any of the parties notify in advance the counterparty of their intent for termination. On the other hand, the lease agreement which does not contain a validity term can be terminated at any moment by one of the parties. In any case, the lease agreement cannot have a longer duration than five years for the residential lease and 30 years for the commercial lease. If the parties have not provided for a lease term, the lease agreement is considered concluded for the duration of the legal term.

One of the main obligations of a lessor in a lease agreement is to ensure the free and quiet enjoyment of the immovable property to the lessee, and the latter can terminate the lease agreement in case such enjoyment has not occurred. On the other hand, the major obligation of a lessee in a lease agreement is to pay the lease price and not intentionally damage the immovable property, and the lessor can terminate the lease agreement in case the lessee does not fulfill such obligations.

In addition to the Civil Code's chapter which specifically regulates the lease agreement, the general termination provisions which apply to all the contracts are also applicable to the lease agreement. More specifically, in these general provisions is stipulated that when one of the contracting parties fails to fulfill its contractual obligations, the other contracting party, may either request the fulfillment of the obligation, or the termination of the contract, in addition to the claims for compensation. The contracting party may notify in writing the other party that has failed to fulfill the obligation, asking for its fulfillment within an appropriate period, stating that, if after this period the breach is not remedied, the lease agreement will be considered terminated.

Regarding the renewal of the lease agreement, the Civil Code provides for an automatic legal renewal option, in case after the expiration of the lease term, the lessee is allowed to use the leased property without any objections from the lessor. The automatically renewed lease agreement is regulated under the same terms and conditions as the previous one, but its duration is set as for fixed-term leases.

6.5 Rent Regulations and Rent Reviews

The Civil Code, in the framework of rent regulations and reviews, focuses on the object of the lease, its handing over to the lessee and vice versa at the end of the lease agreement, maintenance, and the behavior of the parties regarding their rights and obligations in connection with the leased property.

Pursuant to such principles the lessor must:

1. deliver the item to the lessee on time and in a position to allow the usage for which the parties have agreed in the contract;

2. maintain and keep the leased property in the same condition;

3. guarantee peaceful enjoyment during the rental period;

While the lessee has the following rights and obligations:

1. receive and use the leased property for the purpose provided in the contract and in the case, this is not specifically regulated, use it in accordance with the nature of the leased property;

2. effectuate the lease the payment on time;

3. is liable for the loss and damage of the leased property which might occur during the lease term of the lease;

4. hand over the leased property to the lessor in the same condition that was handed over to him/her and in accordance with the description made by the parties in the lease agreement, except for damages deriving from wear and tear.

6.6 Services To Be Provided Together With the Lease

In our jurisdiction, there is no specific regulation on the services rendered together with the lease. On the other hand, the legislator leaves it to the discretion of the parties to insert any provisions in the lease agreement as they deem fit and/or necessary for the regulation of their commercial relationship.

6.7 Fit-Out Works and Their Regulation

The Civil Code regulates the relationship between the lessee and the lessor in the cases when the leased property needs fit-out works in order to adapt it to the requirements of the lessee or there is a need for maintenance during the lease term.

When the leased property needs repairs which could be classified as usual maintenance, such expenses must be covered by the lessee. In the cases when the repairs are substantial, the lessee is obliged to notify the lessor.

In the cases of urgent repairs, the lessee can perform the investment directly and such costs are borne by the lessor, the latter is immediately notified. On the other hand, the lessee should collaborate with the lessor in the cases of necessary urgent repairs. If the leased property is not repaired within a reasonable time by the lessor, the lessee is entitled to a proportional reduction of the rent.

Further, Article 816 of the Civil Code stipulates that the lessee should not be compensated for the improvement (fit-out works) of the leased property unless this is specifically performed with the consent of the lessor. In this scenario, the lessor is obliged to compensate the lessee with whichever is less, the investment value or the value of the useful result (i.e., in the case such investment can be exploited by the lessor), at the handing over moment.

The lessee who has made additions to the leased property has the right to remove them at the end of the lease, when this is possible without damaging the leased property, except when the lessor agrees to keep the additions himself. In this case, he must pay the lessee compensation equal to the minimum amount between the costs and the value of the surcharges at the handing over time.

Regarding the tax implications of investments made by the lessee, there are no specific provisions that regulate this matter; however, such expenses are usually recognized as deductible expenses by the tax authorities.

6.8 Transfer of Leases and Leased Assets

The transfer of leases and leased assets is allowed in Albanian jurisdiction through a sublease agreement or when the ownership of the leased property is transferred to a third party.

Except otherwise agreed in the lease agreement, the lessee has the right to sublease the property, but cannot assign the contract to a third party without obtaining first the written consent of the lessor.

In the case of assignment of the lease agreement the lessor is entitled to initiate legal action claiming the payment of the rent from the lessee also from the sublessee and to oblige the sublessee to fulfill any pending other obligations arising from the sublease agreement.

The contractual provisions regulating the annulment of the lease agreement or its termination, apply also to the sublessee, and the decision was taken between the lessor and the lessee also applies to him.

When the leased asset is acquired by a third party, the lease agreement continues to be in force and the buyer has the obligation to observe its provisions in the case the lease agreement is entered into before the sale of the property.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

The Albanian system does not provide proper usage restrictions on real estate. There are no usage restrictions of individual properties legally enforceable. There is only the possibility to assign a certain destination to the common areas of a condominium, which can be enforced also on third-party buyers of an individual immovable property. However, such restrictions are not commonly used in practice.

On the other hand, the Albanian system does regulate zoning and planning. Such regulation is mainly contained in Law No. 107/2014, On Territorial Planning, and the regulation issued in its execution, mainly CMD No. 408/2015, The Regulation on Territorial Planning. Such a set of legislation provides the possibility of different zoning of the territory of the Republic of Albania, providing distinct rules and regulations on the development of real estate, depending on the type of development, i.e., tourism, economic zones, arkeological areas, etc.

With reference to commercial and residential developments, the most relevant type of zoning refers to the General Local Zoning, which provides in general the type of development to which a specific area shall undergo, i.e., residential, commercial, or mixed, and the intensity to which a specific territory shall be developed.

In accordance with the General Local Zoning, the Detailed Local Zoning, provides in detail the development conditions of a specific area of the General Local Zoning, providing for example, distances between constructions, their height, the provision of recreational areas, public roads, etc.

In conformity with the Detailed Local Zoning of a specific area, the specific planning documentation for specific developments provides the specific details of the construction and other environmental and structural details of each building.

7.2 Can a Planning/Zoning Decision Be Appealed?

A planning/zoning decision can be appealed before the competent administrative authority/court in case it is in contradiction with the rules and regulations of territorial planning and violates the rights and legal interests of the real estate owner.

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1 Real Estate Ownership

1.1 Legal Framework

The right of ownership is a fundamental right under the Bulgarian Constitution. Article 17 of the constitution explicitly provides that real estate ownership, including the right to inheritance, is guaranteed and protected by law.

In Bulgaria, property (including real estate) is private or public (state or municipal property). State and municipal property are differentiated into public state and private state property, or public municipal and private municipal property. The law expressly defines which real estate constitutes public state or public municipal property. Any real estate that is state or municipal property but is not defined as a public state or public municipal property constitutes private state or private municipal property.

The rights of all real estate owners (private or public) and the protection given by the law to such rights are equal, except for the possibility of real estate constituting public state or public municipal property to be subject to disposition or encumbrance and acquisition by prescription (continuous possession for five years in good faith or otherwise continuous possession for 10 years). Forfeiture and acquisition by prescription are possible only in relation to real estate constituting private state or private municipal property as well as any type of individual private ownership. A special legislative provision stopped the term for acquisition by prescription in relation to private state/municipal property from running between May 31, 2006, until December 31, 2023, thus preventing the possibility of acquiring private state/municipal property by prescription. However, this provision was declared by the constitution court in April 2023 to be in contradiction with the Bulgarian Constitution, thus, allowing since this date and under certain conditions the acquisition by prescription also of private state/municipal property.

Bulgarian law allows for limited ownership rights over real estate, such as the usufruct right and the right to build. The latter allows the owner of a piece of land to grant to a third party the right to construct a building on the land, in which case the third party becomes the owner of the constructed building.

The Constitution and the applicable legislation allow for expropriation of ownership based on special procedures prescribed by the applicable laws for such needs which may not be satisfied otherwise. The Bulgarian Constitutional Court applies this protection strictly and recently invalidated certain newly introduced amendments to a law allowing for a faster expropriation procedure.

Under Bulgarian law, there are certain restrictions regarding the acquisition of agricultural land by foreigners. Natural or legal persons who have been a resident or established in Bulgaria for more than five years are eligible to acquire titles to agricultural lands. Legal persons with registrations under Bulgarian law less than five years old may acquire titles to agricultural lands if the shareholders in or founders of the company have been resident or established in Bulgaria for more than five years (Domiciles Conditions).

The following are ineligible to acquire and hold titles over agricultural lands: (i) commercial companies in which the shareholders directly or indirectly are companies, registered in jurisdictions with preferential tax regimes; (ii) commercial companies in which the shareholders do not meet the Domiciles Conditions, as stated above; and (iii) joint-stock companies that have issued bearer shares.

In 2024 the Bulgarian real estate market continues to grow rapidly, as it did in the previous years following the first shock of the COVID-19 pandemic. The focus is on residential areas and the increasing interest of buyers in larger apartments and houses near big cities and mainly the capital, Sofia. 2023 also showed increased interest in the purchase and lease of office areas, as transactions in this sector almost halted with the start of the pandemic.

1.2 Registration of Ownership

The Real Estate Register (RER) is maintained by the Registry Agency which has offices with the regional courts across the country. Each real estate transaction is registered in that office of the RER, in the parish in which the particular real estate is located. The RER is a public register.

Registration in the RER as the owner of a piece of real estate does not automatically mean that the registered person is the real owner. Ownership is proved by title documents and not merely by the fact of registration in the RER. Therefore, it is recommended that title due diligence be conducted when acquiring real estate.

The RER is still organized by the so-called "personal system" and not by the "lot system." This means that the batches in which the registered information is filed are created not by lots but by title holders. The "lot system" was recently initiated, but the process has not finished yet.

All rights in rem over real estate must be registered, namely, (i) ownership (sole ownership, co-ownership), (ii) limited real rights to construct buildings, (iii) limited real right of use, (iv) mortgages, (v) easements, (vi) leases for a term of more than one year, and (vii) attachments (i.e., seizure of a property to secure a judgment or to be sold in satisfaction of a judgment). Claims for rescinding agreements transferring ownership or establishing limited real rights, claims for proclaiming such agreements null and void, and claims for proclaiming a preliminary agreement as final are also entered in the RER.

1.3 Publicity of Real Estate Register

The RER is public. Anyone may make an inquiry in both the electronic database and the paper-based files of any RER office about any real estate located in the region of the respective regional court. The RER also provides distant access to the underlying documents as well as online access to the electronic database in all real estate offices in Bulgaria.

1.4 Protection of Ownership

In Bulgaria, private real estate is, in principle, transferred by a notarial deed. When real estate is private state or municipal property, it is transferred by an agreement in writing. The execution of the notarial deed or of the written agreement has a constitutive effect. The registration of real estate transfers with the RER has only a declaratory effect. The document by which a natural or legal person proves their title over certain real estate is a notarial deed or an agreement in writing or other documents depending on the manner of acquisition.

The level of protection of real estate ownership provided by the law is in line with EU standards. An owner who claims unauthorized disposal or use of real estate may file a civil claim and may request the opening of criminal proceedings against the alleged intruder.

Bulgarian law provides that a person who has possessed a real estate property in good faith continuously for five years becomes its owner. Hence, if an owner has possessed the real estate in good faith continuously for five years, it is very likely that its title cannot be challenged by raising new restitution and eviction claims. It is also admissible to add the periods of possession in good faith of consecutive owners in order to achieve the required five-year term and acquire the title by prescription.

A title to real estate becomes absolutely stable after a ten-year period of continuous possession (without any good faith requirement) unless this period is interrupted or terminated. Where the five-year period has elapsed, however, it is likely that an owner's title to the real estate will endure third-party challenges.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

Both share and asset deals are used in Bulgaria in transactions involving real estate. The transaction structure usually depends mostly on tax considerations rather than legal ones, as from a legal perspective there is no great difference.

Our expertise and experience in the field show that investors usually prefer a share deal. If there are significant risks related to this type of transaction, then other means of acquisition may be discussed.

2.2 Share Deal

A share deal requires due diligence of both the real estate and the company that owns it. The key factors considered by investors in such a case are the financial history of the owner, the risk of insolvency or the existence of hidden obligations, and the status of the seller, i.e., the person/party who owns the shares and to what extent the potential investor may expect any claims for breach of representations and warranties related to the company's standing to be successfully collected.

There are no significant taxes and fees associated with a share deal, which is one of the main reasons why many investors use this transaction structure.

As stated above, the main risk associated with such a transaction structure is the financial standing of the company being acquired. This risk is usually addressed by conducting tax and legal due diligence of the company as well as providing for extensive representations and warranties in the share purchase agreement (SPA). The SPA may also provide for certain guarantees (bank or parent company), insurance policies, etc.

2.3 Asset Deal

An asset deal is preferred in the case of smaller transactions or if there are certain risks (e.g., outstanding obligations, pending claims, etc.) related to the company that owns the respective real estate. The parties usually sign a preliminary agreement that regulates the terms and conditions for completing the title transfer. The preliminary agreement may be binding for both parties or only one of them. Usually, the purchaser has the option to decide whether to go on with the acquisition after completing due diligence. The next step is the signing of the transfer agreement in the form of a notarial deed, by which the title of ownership to the real estate also transfers.

The taxes associated with an asset deal are usually around 3% of the transaction value and this is why some investors prefer a share deal, especially in major deals.

The owner usually provides standard representations and warranties as to the title of ownership and lack of any liens on the real estate.

2.4 Disposal Process

The agreement (in case of an asset deal) must be made in the form of a notarial deed and must be certified by a notary public in whose region the real estate is located. The parties or their representatives must be present in person before the notary public for the signing of the notarial deed. The notary must read the notarial deed to the parties. These formal requirements affect the validity of the agreement. When the real estate to be transferred is state or municipal property, the agreement must be made in writing. The notary fees depend on the transaction value and are fixed by law.

In the case of a share deal, there may be certain requirements as to the form of the share purchase agreement depending on the type of shares. Further registration with the Commercial Registry or other relevant registries may also be required in this case.

The time for handover and passing of all risks is stipulated in the purchase contract. Usually, the parties agree to hand over the real estate at the time of transferring the purchase price to the seller's account. All risks pass to the buyer upon signing the agreement if the agreement itself does not stipulate otherwise.

2.5 Registration of Change of Ownership

Once the agreement for the transfer of ownership is signed before the notary public the latter must register it with the RER on the same day. The registration fee is 0.1% of the transaction value. The judges with the respective regional RER office review only the description of the property for whether it meets the legal requirements.

As stated above, the fact that a person is registered as the owner of certain real estate with the RER does not automatically mean that they are the actual owner of the real estate. Therefore, it is recommended to conduct a title due diligence prior to acquiring real estate in Bulgaria.

2.6 Risks To Be Considered

Sales contracts on real estate frequently contain warranties relating to the defective or faulty performance by the seller.

The statutory warranty period for real estate defects is one year. This can be extended or shortened by mutual agreement. The time starts running from the handover. If the seller disputes the defect, the purchaser has to file a claim within the relevant warranty period in order to prevent the claim from becoming statute-barred. The burden of proof that the defect existed upon transfer of possession is borne by the purchaser. The seller is not liable if the purchaser was aware of the defects when the sale contract was executed.

If third-party rights on the real estate are discovered after the sale, the statutory warranty period is five years from title transfer. The purchaser is entitled to cancel the contract in court, whereupon the seller is obliged to pay back the purchase price together with compensation for the costs of the transfer and for damages caused. However, if the purchaser was aware that such third-party rights existed at the time of the sale, the seller is obliged to pay back only the purchase price.

There are no pre-emptive rights or rights of first refusal under Bulgarian law, except in the case of co-ownership, i.e., if a co-owner wishes to transfer their share in the real estate, they are obliged to offer the share to the other co-owner under the same terms and conditions as to the potential purchaser.

Any other rights (e.g., mortgages, ownership claims, lease agreements, etc.) must be registered in order to be opposed to the new owner.

3 Real Estate Financing

3.1 Key Sources of Financing

The most common method used to finance the purchase of real estate is a mortgage loan. The creditor registers a mortgage simultaneously with the purchase of the real estate. The mortgage must be registered with the RER in order to be both valid and opposable to third parties.

3.2 Protection of Creditors

As stated above, the main type of security used in real estate financing is a mortgage. If the transaction and/or financing is more complex (e.g., involves a lot of properties), a special pledge over the commercial enterprise also may be considered.

Mortgage enforcement is a rather swift process. To enforce a mortgage, a creditor can file an application requesting the court to allow immediate execution and to issue a writ of execution. The court procedure takes approximately seven days without informing the debtor. If the creditor is a bank, it must provide the court with an excerpt from the accounting books certifying the amount of the debt and the mortgage agreement/application. The mortgage agreement does not have to contain a clause certifying that it establishes an executory right. On the grounds of the issued writ of execution, the creditor can initiate execution proceedings.

The special pledge enforcement is out-of-court enforcement and in certain cases may be preferable to mortgage enforcement. The start of the enforcement is registered with the Special Pledge Register and the creditor is entitled to sell the pledged assets directly to third parties.

4 Real Estate Taxes

4.1 Transfer Taxes

There is a transfer tax in the range of 2.5%-3% for any real estate transfer. The exact amount depends on the municipality where the real estate is located.

4.2 Specific Real Estate Taxes

Real estate owners must pay an annual property tax and garbage collection fees. The amount of these taxes and fees, again, depends on the municipality where the real estate is located.

5 Condominiums

5.1 Legal Framework for Condominiums

The concept of condominiums is recognized by Bulgarian law and there is a special act in this respect – the Condominium Management Act (CMA).

The CMA regulates public relations involving the management of common areas of buildings under condominium ownership arrangements and the rights and obligations of the owners, users, and occupants of individual units.

The management of common areas of buildings under condominium ownership in closed-type residential complexes (residential parks) is regulated under a written agreement concluded between the investor and the owners of individual units. Such an agreement may be registered with the RER and is binding for any new owner of a unit in such a complex.

5.2 Rights and Duties of Co-Owners

The owners of units in a condominium are entitled to (i) use the common areas of the building in accordance with their designation and (ii) participate in the management of the condominium.

The condominiums are governed by (i) the general meeting of the owners and (ii) the management council or manager elected by the general meeting. At the general meeting, the owners have the right to vote in proportion to the undivided shares that they own in the condominium.

5.3 Liability of Co-Owners

The owners also have certain obligations, amongst which the most important ones are: (i) not to obstruct the other owners, users, and occupants from using the common areas of the building; (ii) not to engage in repair and overhaul activities in their unit, which result in impairment of the design parameters of the construction; (iii) to fulfill the requirements set out in the respective statutory regulations when keeping animals in their units and not to cause inconvenience to their immediate neighbors; (iv) to comply with the decisions of the condominium management bodies; (v) to pay the costs of repairs, major overhaul and major renovation of the common areas of the building, replacement of common installations or equipment, and contributions to the repair and renovation fund in a proportion corresponding to their undivided shares in the common areas; and (vi) to pay the costs of management and maintenance of the common areas of the building.

5.4 Rights and Duties of Condominium Associations

The owners of condominiums may establish an association with the purpose of obtaining money from European Union funds and/or the public or municipal budget, from grants and subsidies, and/or use of their own resources for the purposes of major overhaul and/or major renovation of buildings under condominium ownership arrangements. Such an association has the status of an independent legal entity established under the CMA and is registered with the local municipality.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

There is no standard form of a lease agreement in Bulgaria. The parties are free to negotiate all lease terms, provided they are in accordance with the Bulgarian Obligations and Contracts Act. The law does not require the lease to be in written form in order to be valid. However, a written form of the lease agreement with notary-certified signatures is required if the agreement is to be registered with the RER.

The standard terms and conditions of the commercial lease agreements are related to the terms of a lease, termination rights, rent, service charge, indexation, maintenance and repair obligations, subletting, etc.

Commercial lease agreements related to offices, shopping centers, and even industrial buildings have developed a lot in the past decade. The entry of major EU and US companies has introduced in Bulgaria the standard terms and conditions used for commercial lease agreements in the EU and USA.

6.2 Regulation of Leases

There is no difference in the regulation of lease agreements according to the type of property. Moreover, the law is rather liberal when it comes to regulating leases and there are no rules for commercial leases that cannot be contractually excluded.

6.3 Registration of Leases

A lease agreement may be registered with the RER if the agreement is signed in writing with notary-certified signatures. If a lease agreement is registered with the RER, it is binding for the registered term for the new owner in case of transfer of the leased real estate.

6.4 Termination of Leases and Renewals

If a lease agreement is signed for a fixed term, it may not be terminated without cause if not explicitly agreed in the agreement. The lease agreement may be terminated with cause on the grounds agreed in the agreement.

If the lessee continues to use the real estate after the expiry of the agreed lease term, the lease agreement is deemed to be prolonged as a lease agreement without term. In such a case, the lessor may terminate the lease at any time with one-month notice.

6.5 Rent Regulations and Rent Reviews

There are no statutory rent regulations and reviews.

6.6 Services To Be Provided Together With the Lease

The lessor may provide additional services (e.g., cleaning, maintenance, etc.) if agreed with the lessee, but is not required to by law.

6.7 Fit-Out Works and Their Regulation

Fit-out works are agreed upon between the parties. There are no statutory regulations. Under the law, the lessee is obliged to return the real estate in the state in which it was delivered taking into account normal wear and tear.

6.8 Transfer of Leases and Leased Assets

If a lease agreement is registered with the RER, it is binding for the registered term for the new owner in case of transfer of the leased real estate.

OSTERMANN

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2025

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1 Real Estate Ownership

1.1 Legal Framework

The Croatian Constitution places the inviolability of ownership in the category of the highest values of the constitutional order of the Republic of Croatia and one of the bases for its interpretation. It also provides that: (i) ownership is guaranteed under the Constitution but that it also obliges its holder to contribute to the common good, (ii) it is possible, as provided under the law, to limit or confiscate ownership in the interest of the Republic of Croatia, with market value compensation, (iii) the entrepreneurial freedom and ownership rights can be exceptionally restricted by law to protect the interests and security of the Republic of Croatia, nature, environment and people's health, and (iv) that a foreign person can acquire ownership under the conditions prescribed by law.

A key piece of legislation regulating real estate ownership as one of the proprietary rights is the Act on Ownership and Other Proprietary Rights (Official Gazette No. 91/96, 68/98, 137/99, 22/00, 73/00, 129/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, 81/15, 94/17; Ownership Act). Said source of law defines the right of ownership as a proprietary right that entitles its holder to exercise its rights over the owned property and its benefits, as well as to exclude every other person from it if not contrary to other persons' rights and mandatory restrictions. The owner has the right to possess, use, utilize, and dispose of his property. In comparison to other proprietary rights (i.e., pledge [hypothecation], easement [servitude] right, etc.), which provide less volume of powers over property, the ownership is the one with the widest scope of authorizations and the only one that is not considered under the law as limited. Ownership Act has experienced amendments over time, but its main principles and structure have been a stable part of Croatian legislation.

The Ownership Act also provides that there is only one type of ownership and that it obliges its holder (providing more details on the above-mentioned general rule from the Constitution to contribute to the common good) and that in general, when exercising his right, the owner is obliged to act with consideration towards the general and other interests that are not contrary to his right. In that sense, said act provides two categories of restrictions of ownership: (i) general (i.e. not to use the right for the purpose of causing damage to another person) and (ii) special restrictions (i.e. sequestration, expropriation). Such restrictions can only be imposed in volume and duration according to the rules set out in the respective applicable legislation.

The Ownership Act defines that individual real estate consists of land plot(s), including everything that is relatively permanently connected to the surface of it or underneath it. When several land plots are registered with the land register in the same land register file, these plots are legally united into one body (land register unit), which, as such is legally one real estate. A land registry unit is additionally defined by the land registry's main piece of legislation, the Land Registry Act (OG 63/19, 128/22, 155/23, 127/24; 'Land Registry Act') which provides that the land register unit (i) is a legal unit whose composition can be changed only by a land register write-off of cadastral plots or their land register adding to said unit and (ii) that can consist of one or more cadastral plots located in the same cadastral municipality.

Buildings and other structures that are permanently attached to the land are not parts of the land if they are legally separated from it by a proprietary right that enables its holder to own such building or other structure on that land (for example, building right). The same applies to buildings and other structures that are legally separated from the land or from the common good by a legally established concession that authorizes its holder to own such a building or other structure.

Ownership can exist in individual form (one owner) or with other co-owners so with respect to co-ownership regimes, the Ownership Act provides a regime of co-ownership and in addition to that – a special regime of individual ownership over particular/individual parts of the real estate (etage ownership) by partitioning of a real estate (legal division to individually owned units with common areas jointly owned by all etage owners as the co-owners). Etage ownership is regulated as a separate regime but general principles of co-ownership apply to a certain extent, especially to the common parts that were not subject to etage partitioning. Etage ownership over a particular/individual part of a real estate derives from and is non-detachable from the co-ownership part over the entire real estate. Also, it entitles the co-owner to exercise all his owner's powers and duties while managing the individual part of the real estate instead of all co-owners as if the individual part was under their sole ownership and to do with such part and benefits deriving from it as they see fit and to exclude anyone else from it.

This ownership regime may be established on a part of co-owned real estate which is an independent usage unit, suitable for the independent exercise of the co-owner authorities, such as an apartment or another independent space unit, where another independent unit includes independent business premises, garages, etc. Next to an apartment or another independent space unit, ownership of a particular part of real estate may extend to accessory parts, such as open balconies, terraces, gardens, cellars, attics, parking places, or another independent space unit. Any co-owner on whose co-ownership share(s) the ownership of a specific particular part of real estate has been established is entitled to all benefits derived from such part unless they belong to someone else based on another legal ground. On the other hand, each such co-owner is obliged

to take care and maintain the apartment/etage or another independent space unit and its equipment (especially the one for utilities) so that other co-owners do not suffer any damages (for which the co-owner who caused the damage would be liable for damage compensation to other co-owners which suffered the damage). In this regime, any co-owner is authorized to solely and independently enter a residential lease contract or a business lease contract for such part, either in its entirety or partially (if possible), without having to request approval or consent from other co-owners, unless agreed otherwise and registered as such in the land register. The relationship between the co-owner as the lessor and the lessee is governed by the civil obligations legislation.

With respect to rules for foreigners to acquire real estate in Croatia, the Ownership Act provides that its provisions also apply to foreign natural persons and legal entities, unless otherwise stipulated by law or international agreement. It furthermore provides that foreign natural persons and legal persons can, under the principle of reciprocity, acquire ownership of real estate in the territory of the Republic of Croatia on the basis of (i) inheritance and (ii) the consent given by the minister responsible for judicial affairs of the Republic of Croatia (without said consent real estate sale and purchase agreement is null and void).

However, said rules do not apply to the citizens of the member states of the European Union and EU legal entities (having their registered seat in one of the EU member states) – they acquire ownership of the real estate under the same rules and legal requirements applicable to the ownership acquisition for Croatian citizens and legal entities with registered seat in Croatia.

As regards expropriation, the Ownership Act regulates that in the interest of the Republic of Croatia, the ownership can be fully expropriated, as provided under the law (complete expropriation) or limited by constituting rights in favor of a third party over the owner's real estate (incomplete expropriation), in which case the owner is entitled to compensation according to the expropriation legislation. A key piece of legislation regulating the expropriation is the Act on Expropriation and Determination of Compensation (Official Gazette No. 74/14, 69/17, 98/19), which governs in detail the system of expropriation, the method of determining the interest of the Republic of Croatia in that system, authorities responsible for conducting the expropriation procedure, preparatory activities and the rules of procedure for expropriation, the method of determining compensation for expropriated real estate, as well as other issues related to expropriation.

The combination of different factors in the Croatian real estate market, such as high demand, inflation/higher real estate prices, and limited supply of available real estate have resulted in slowing down of the residential real estate market. A shortage of supply of available business premises is also present in the commercial/office market (especially in the capital city of Zagreb as the center of business activities) whilst the available volumes of retail/shopping malls and parks, as well as warehouse and logistic premises, have been stable in 2024.

1.2 Registration of Ownership

All proprietary (real estate) rights (ownership included) and other legally significant facts and relations are registered in the land register – specifically, the Ownership Act regulates that the ownership of the real estate is acquired by registration of the acquirer's ownership in the land registry, as provided under applicable legislation, on the basis of the validly manifested will of the previous owner aimed at transferring its ownership to the acquirer. The same rules respectively apply to changes of ownership and its termination in legal transactions.

Ownership of the real estate that is not registered in the land register is acquired by court deposit of an appropriate certified document with capacity for registration in the land register, by which the previous owner allows the registration of the acquirer's ownership, to which the rules on acquisition by registration respectively apply.

The main piece of legislation detailing and implementing said rules from the Ownership Act is the Land Registry Act which prescribes the organization, arrangement, management, and safekeeping of land registers, defines the subject and types of entries as well as conducting the land register procedures.

Land registries are maintained by the competent municipal courts as the first instance courts and are kept electronically, in the Land Registers and Cadastre Joint Information System – an information system in which all land register and cadastre data are stored, maintained, and managed. Within that system aligned land register and cadastre data are kept in the Land Information Database. Land registers are based on the data from the cadastral records, i.e., the cadastral survey.

Whilst all proprietary rights are registered with the land register, the cadastre is a separate public registry in which the possession is registered, along with a description of the plots and maps of the cadastral municipalities and the ownership right after it has been acquired and registered in the land register. Under Croatian law, possession is defined as factual control over an object (real estate included) and the person having such factual control over the respective object is its possessor (i.e., exercises factual usage). Unlike ownership which is a proprietary right that authorizes its holder (the owner) to do whatever he wants with the object (real estate included), to benefit from it, and to exclude everyone else from it (with the only limitation that this is not contrary to others' rights and legal restrictions), the possession is not a proprietary right but

a potentially legally relevant factual control by possessor over the real estate.

Under the Act on State Survey and Real Estate Cadastre (Official Gazette No. 112/18, 39/22, 152/24; Cadastre Act') cadastral information on the real estates (i.e., their size/surface, number of the cadastral plot, usage, maps, etc.) are the basis for land registers maintained by the land register departments of municipal courts and these land registers are obliged to submit to the competent cadastre offices all of their decisions that affect the data in the cadastre immediately after the implementation of said decisions in the land register.

Although the cadastre data is the grounds for land registries (for example, if several plots are merging or de-merging, changing surface, etc. such changes can only be done through cadastre on the basis of the authorized surveyors' survey report requested by the owner, the authorized person or by the competent authority), said data is not grounds for acquiring ownership of the property per se – legal title and grounds for ownership acquisition are either a legal transaction, decision of the court or other competent authority, inheritance or by virtue of law and it is fully acquired once the registration is executed in the land register which is exclusive authorities for ownership (and other proprietary rights) acquisition, all as explained above. In that sense, it is important to differentiate the information on the ownership in the cadastre and in the land registries, with the information on the ownership in the cadastre having just an informative nature – the documents issued by the cadastre on the property which include the information on the possessor contain note that cadastre documents are not proof of ownership (only the excerpt from the land register shows the factual and legal status of the real estate at the time of issuing the excerpt and it is the only valid proof of real estate ownership).

The cadastre should also be notified of the change of possessor in order for those cadastral records to be accurate – however, in practice, there have been discrepancies between the land register records and the cadastral records with respect to actual possessors. The reasons for those discrepancies are numerous and some go back historically – from the owners failing to in timely manner inform the cadastre of the changes that occurred in the land register (which before was not done by the land registries automatically as it is now but by the owners and possessors themselves) resulting in outdated data to for example, some places having issues with damaged or destroyed physical land register books that need reconstruction with the delicate process of their recovery and digitalization which has to be conducted thoroughly, etc. However, the situation is improving with the digitalization of the land register and cadastre records and with the obligation of the land registers to deliver to the cadastre all their decisions that need to be recorded in the cadastre. The process of overall digitalization of these public records conducted by the Ministry of Justice and Administration is not fully completed but it is ongoing and continuous.

1.3 Publicity of Real Estate Register

The land register is public and fully transparent, and anyone can request insight and issue of excerpts, copies, or printouts from the land register records. All such documents issued by the land register are legally considered public documents. It is also deemed that the land register truly and completely reflects the factual and legal status of the property. As explained in Section 1.2., all land register and cadastre data are electronically stored, maintained, and managed in the publicly available Land Registers and Cadastre Joint Information System with aligned land register and cadastre data being kept in the Land Information Database as part of that system.

1.4 Protection of Ownership

When conducted as provided under the rules provided by applicable proprietary and land register legislation explained above, the entries in the land register are binding. The acquirer who acted in good faith with trust in the land register records is legally protected if he did not know or, given the circumstances, had no sufficient reason to suspect that the land register data was not complete or that it was different from the non-registered status of the real estate. A lack of good faith cannot be laid against anyone just because they did not investigate the non-registered status of the real estate. A person who in good faith registered the land register right, acting with trust in the completeness of the land register, acquired it free of encumbrances that were not registered at the time when the registration was requested nor was it evident from the land registers in the moment when registration was requested unless otherwise provided under the law. The exception is when that acquirer does not enjoy protection regarding those rights, encumbrances, and restrictions that exist on the basis of the law and are not entered in the land register such as legal liens/encumbrances established by virtue of law the fulfillment of the legal prerequisites provided for this purpose by special pieces of legislation. Such encumbrances on real estate shall be entered in the land register at the request of the creditor and if failed to do so said encumbrances still exist.

A person who has in good faith registered a land register right in the land register, acting with trust in the verity of the land register, enjoys the protection of that trust, especially since no one will be able to dispute the validity of such acquisition due to the invalidity of their predecessor's registration after expiration of the deadlines for filing a lawsuit for cancellation (clearing) of the predecessor's registration, as provided under land register legislation. It should be noted that these rules on protection do not apply if the property was stolen, i.e., if the predecessor's acquisition was the result of a violation of the

law.

With respect to protection of the owner claiming unauthorized use of the real estate proprietary legislation provides that the owner is entitled to demand protection of the property from violations through the court proceeding in which the owner must prove (i) their ownership and (ii) the violation/disturbance in exercising the ownership rights. If a third party claims entitlement to actions that disturb the ownership, such claim is subject to the burden of proof of such entitlement. In the event of damage, the owner is entitled to damage compensation according to the general rules on compensation for damage under civil obligations legislation.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

With respect to the form of the real estate being disposed to investors, the decision on acquisition either of the part or entirety of the business shares, i.e., the share deal model or the asset deal model depends on the individual circumstances of each transaction – the corporate structure of the target, its financial status and liabilities identified in the legal, technical and tax due diligence of the target, the industry in which the target company operates, i.e., in which the transaction is taking place and its specific characteristics and trends, type of the property, its legal status and tax treatment, as well as further business plans with the property (whether the asset in question is, for example, land with potential for construction and development or existing building/project with an existing established business model ready to be taken over and continued without interruption). With an asset deal, the purchaser acquires assets with a narrower scope of potential liabilities in comparison to a share deal where it acquires all liabilities of the target company's business activities. Having in mind that potential risks associated with both types of transactions can be equally serious and damaging and that each transaction type is subject to different tax treatments, a proper business decision on the type of transaction and its structure must be substantiated by the results of the legal, technical (if necessary), and tax due diligence of the target company.

2.2 Share Deal

Limited liability companies represent a dominant type of corporate structure in Croatia and the vast majority of Croatian companies (over 90%) are incorporated as LLCs. The rules for share transfer in LLC are provided under the Companies Act (Official Gazette No. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15, 40/19, 34/22, 114/22, 18/23, 130/23, 136/24; Companies Act). That piece of legislation provides that an agreement for a share deal transaction must be concluded in the form of a notarial deed, or a private document certified by a notary public or a court decision that replaces such agreement and the same rule applies to undertaking of the obligation to share transfer. The share transfer does not require amendments to the articles of association of the target company. The target company's articles of association can contain other conditions for the share transfer, especially if the target company's consent to the transaction is required. Business shares to which the obligation to fulfill additional obligations is bound can be transferred only with the target company's consent. If such consent is denied the acquirer who has fully paid for said share(s) is entitled to request from the court for such consent to be issued. The court will allow the transfer if no valid reasons for denying the consent exist, and if the transfer can be conducted without damage to the target company, its shareholders, and creditors.

A share transfer must also be recorded in the share ledger and the list of shareholders has to be submitted to the court register. Registration of the new shareholder with the de-registration of the previous shareholder (if the transaction results in the end of the shareholding status of the seller) has to be executed in the court register. Usual fees related to share transfer (after conducting respective due diligence procedures) are, like in the majority of jurisdictions, costs of legal, technical, and tax advisors (for due diligence processes and for the transaction), court fees, and notarial fees. The notary fees depend on the value of the transaction but have a prescribed maximum amount, all as provided by the secondary legislation, Regulation on the Temporary Notarial Fees' Tariff (Official Gazette No. 8/94, 82/94, 52/95, 115/12, 120/15, 64/19, 17/23. Amounts of court fees are prescribed in the Ordinance on Court Fees' Tariff (Official Gazette No. 53/19, 92/21, 37/23).

Particular rules for the joint stock companies are contained in a separate legislation piece, the Act on Takeover of the Joint Stock Companies (Official Gazette No. 109/07, 36/09, 108/12, 90/13, 99/13, 148/13) which provides general principles of takeover and detailed rules on conditions for the target company takeover bid, the takeover procedure, the rights and obligations of the participants in the takeover and the supervision of the procedure. By said Act Directive 2004/25/EC of April 21, 2004, on Takeover Bids was implemented into the Croatian legal system. It contains detailed procedural rules, conditions under which the takeover can be conducted, provisions on mandatory and voluntary takeover bids, and the rights and obligations of bidders and shareholders of the target company. The cost structure is more complex than in LLC share transfer and their final amount depends on the specifics of the individual transaction.

With respect to the risks potentially transferred to the purchaser and their addressing in transaction documents please see Section 2.1.

2.3 Asset Deal

For an asset deal (in the presumed scenario the real estate being the asset) to be facilitated under Croatian legislation, several legal conditions have to be met, i.e., the following steps taken:

(i) the agreement on the purchase of the real estate must be in written form and the signature of the seller must be certified by the notary public (the prescribed amount of fees for notarial services for such certification is symbolic),

(ii) the seller must provide written consent to registration of ownership title to the purchaser (either within a real estate transfer agreement or in a separate document, depending on the terms of payment of the purchase price, and in both cases for such consent to have a full effect the seller's signature must be certified by the notary public),

(iii) complete application for registration containing all prescribed elements and information needs to be submitted to the land register electronically by a notary public or by an attorney, as mandatory users of electronic communication with the court through the Land Registers and Cadastre Joint Information System (if the application is not filed electronically, it will be dismissed by the land register) (prescribed amount of court fee for registration is symbolic),

(iv) documents substantiating the application must be provided to the notary public or an attorney in original (electronic documents in proper electronic form are being considered as the originals) or certified copy, and

(v) the competent land register department of the municipal court must pass the decision on allowing the purchaser's ownership to be registered in the land register (the land register is obliged to issue a decision in the regular procedure within 15 working days from the day the proper and complete application has been filed to the land register).

Having in mind that the real estate purchase agreement although is a legal ground for ownership title, does not automatically result in ownership transfer and that transfer, the moment of filing a complete application to the land register is of the most importance for the procedure. This is because the rules on applications' priority rank apply meaning that the applications for registration are resolved and decided on in accordance with their priority which is determined by the moment (day, hour, minute, second) when the application for registration was submitted to the land register.

In addition to essential elements of the real estate purchase agreement – real estate description and purchase price – that agreement usually contains provisions on dynamics of payment of the purchase price, seller's warranties with respect to the legal status of the real estate, and other relevant circumstances, the moment of takeover, the moment of transfer of obligations on payment of the utilities and other costs, etc. It should be noted that Croatian legislation provides the possibility of entering into the real estate purchase pre-agreement by which the seller and the purchaser oblige to conclude the main real estate purchase agreement within the stipulated deadline and upon fulfilling of conditions agreed by the parties. The pre-agreement must have the same essential elements as the real estate purchase agreement (real estate description and purchase price) and it is usually entered into when certain activities must be conducted by the parties before entering into the main purchase agreement – so it usually contains provisions on the deadlines for securing financing of the purchase, procedure and deadlines on de-registration of certain land register entries over the real estate, registration of the pledge (hypothecation) in favor of the seller's bank as the security for the loan repayment, etc.

With respect to the risk potentially transferred to the purchaser and their addressing in transaction documents please see Section 1.4.

2.4 Disposal Process

Please see Sections 1.2 and 2.3.

As mentioned in Section 1.1., proprietary legislation provides that when the purchaser-foreign person is required to obtain the consent of the minister competent for judicial affairs of the Republic of Croatia for the acquisition of the real estate ownership, the purchase agreement for that transaction is null and void without said consent. The minister decides on the granting of said consent based on the request of a foreign person who intends to either acquire or dispose of that real estate. A foreign person who has been denied consent is not entitled to repeat the request for issuing consent for the same real estate for five years from the date of submission of the rejected application.

2.5 Registration of Change of Ownership

Please see Sections 1.2 and 2.3.

2.6 Risks To Be Considered

For some categories of real estate, several pieces of legislation provide legal pre-emption rights (right of first refusal) in favor of the Republic of Croatia or local and regional government units. One of those cases is provided under the Act on Inland Navigation and Inland Ports (Official Gazette No. 144/21) which regulates that the Republic of Croatia has the pre-emption right on real estate within the public port area. Furthermore, the Islands Act (Official Gazette No. 116/18, 73/20, 70/21) provides that the Republic of Croatia has the pre-emption right on the real estate on small, occasionally inhabited and uninhabited islands, and the real estate owner who intends

to sell such real estate must submit a written offer to the competent authority which is obliged to respond in three months from the day of the receipt of the offer. If upon expiration of the deadline the owner does not receive a written notification of acceptance of the offer, it will be considered that the offer has been rejected.

The Spatial Planning Act also provides the legal right of first refusal and it prescribes that the government, county assembly, the assembly of the City of Zagreb, the city council, and the municipal council pass the decision on determining the area in which said authorities have the right of first refusal on the real estate necessary for the construction of infrastructure or buildings with public and social purpose. The owner who intends to sell such real estate must, through a notary public or in some other appropriate manner, offer the property to the authority-holder of the pre-emption right and notify it of the purchase price and conditions of the sale. If the said authority does not respond with offer acceptance within 60 days from notification of the offer, the owner is entitled to sell the real estate to a third party but only under the same conditions or for a higher purchase price. Entering into the real estate purchase agreement contrary to these rules represents grounds for annulment of that agreement with a statute of limitation period for filing the lawsuit for annulment of three years from the day of concluding said agreement.

Another piece of legislation regulating the legal pre-emption right (right of first refusal) in favor of the city, municipality, county, City of Zagreb, and the Republic of Croatia (with city and municipality having priority in exercising the pre-emption rights over the county, the City of Zagreb and the Republic of Croatia) is the Act on Protection and Preservation of the Cultural Heritage (Official Gazette No.145/24). That act lists the pre-emption right as one of the restrictions on transactions involving cultural goods. The seller of the cultural property, as well as the intermediary in the transaction (if any), is obliged (i) to inform the buyer that the real estate is a cultural property protected under the provisions of said act, (ii) to present proof of ownership of the cultural property to the buyer, and (iii) to present to the buyer documents on the waiver of the pre-emption right from the competent authority after the procedure of offering the property to the competent authority and its refusal within the legal deadline of 30 days from the day of the receipt of the offer in which the offer must be refused if the authority in question does not intend to exercise its legal pre-emption right.

The Agricultural Land Act (Official Gazette No. NN 20/18, 115/18, 98/19, 57/22, 152/24) regulates that the Republic of Croatia has the legal pre-emption right (at market value) (i) on agricultural land with a surface over 10 hectares for continental areas and over 1 hectare for coastal areas and (ii) after expiration of ten years period from the date of conclusion of the real estate purchase agreement, for agricultural land that was previously purchased from the Republic of Croatia. In both cases, the owner of agricultural land that meets the said requirement is obliged to offer the land for sale to the ministry competent for agriculture which then has 30 days deadline to respond to whether it the offer will be accepted. If the decision is for the offer not to be accepted and for said legal right of first refusal not to be exercised, the seller is entitled to sell the land to the third party but not at a lower price than the one offered to the ministry.

All above cases regulate legal pre-emption right (right of first refusal) which is established and exists (for an unlimited period) on the basis of applicable legislation. Croatian civil obligations legislation differentiates this type of pre-emption right from the contractual pre-emption right. Unlike the legal pre-emption right, a contractual one's duration is limited to a period of five years. In both cases, the holders of the pre-emption right are entitled, under conditions provided under the law, to contest the real estate sale in court proceedings if it was carried out without the buyer/seller notifying them of the intended sale. The unsatisfied purchaser then, depending on the circumstances of the case, may seek damage compensation from the seller who was obliged to notify the holder of the pre-emption right.

Additionally, with respect to claiming remedy of defects of the acquired real estate please see Section 1.4.

3 Real Estate Financing

3.1 Key Sources of Financing

A significant number of real estate transactions (regardless of whether the transaction in question concerns the residential market or, for example, land for real estate development projects) in Croatia are financed by loans obtained from commercial banks. The main piece of legislation regulating the loan relationship between the bank and the real estate buyer (the borrower) is the Civil Obligations Act (Official Gazette No. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, 155/23) which provides general rules on loan agreements with the banks. It prescribes that the mandatory elements of the loan agreement are the amount and terms of granting the loan, the purpose of the loan, and its use and terms of repayment. Croatian banks do not practice loan pre-approval, so the standard procedure of loan approval includes the borrower (after evaluating and coordinating with the bank on its loan capacity) to provide executed the real estate purchase pre-agreement (if used in the structure of the transaction) and the main purchase agreement.

In addition to the general rules provided in the Civil Obligations Act, loan agreements contain elaborate provisions detailing the terms of individual loans. With respect to the form

of the loan agreement, the Civil Obligations Act prescribes that it must be in the written form and the business practice in banking and finance in Croatia with respect to the form of the agreement is for it to be in a form of a private document with its content certified by the notary public (with the same legal effects as a loan agreement in a form of a notarial deed).

3.2 Protection of Creditors

The main type of security used in real estate transactions is a voluntary contractual pledge (hypothecation), one of the proprietary rights regulated by the Ownership Act (more on proprietary rights and their legal status please see Section 1.1. and as to the conditions and procedure [including the application of the priority rank principle] for its registration in the land register please see Sections 1.2. and 2.3).

A pledge over real estate can be registered in the land register on the grounds of (i) legal transaction (voluntary pledge), (ii) court decision (court pledge), and (iii) meeting the legal requirements provided under the applicable legislation (statutory pledge). The Ownership Act defines the voluntary contractual pledge (hypothecation) over the real estate as a voluntary contractual pledge established without handing over the possession of the real estate to the creditor (who is entitled to neither taking over nor maintaining the possession over the real estate), which is acquired by its registration in the land register. In cases where the real estate for some reason is not registered in the land register, that right is acquired by depositing the certified document by which the owner expressly stated consent allows the registration of hypothecation over the real estate.

In addition to the voluntary contractual pledge (hypothecation), Croatian legislation also regulates fiduciary ownership (transfer of ownership as a security) as another model of security for loan repayments. That type of security is present in the Croatian banking and finance market but to a lesser extent in comparison to hypothecation as a main type of security in the majority of real estate transactions. Hypothecation is established over the real estate on the basis of a hypothecation agreement which must be in written form, with prescribed content, and usually is in the form of a private document with its content certified by the notary public (with the same legal effect as a loan agreement in a form of notarial deed).

Depending on the structure of the loan and its purpose, it is possible for the borrower and the bank to agree on additional security to be provided in the form of a voluntary pledge over a third party's real estate used as collateral. In that case, the owner of that real estate is a party to the hypothecation agreement and must provide (either in that agreement or in a separate certified document) expressly stated consent (i) for their real estate to be encumbered as a security instrument and (ii) for registration of hypothecation in the land register in favor of the bank/lender.

Unless otherwise agreed between the parties of the loan agreement and hypothecation agreement, Croatian legislation provides the possibility of disposal of the real estate on which a hypothecation has been registered with the land register, i.e., acquired by the bank/lender. Since the disposal of the real estate does not affect duly registered and acquired hypothecation, in that case, the purchaser of the real estate would acquire the real estate with that encumbrance (or could be remunerated from the amount of the purchase price in that transaction and then said encumbrance would be de-registered).

In addition to hypothecation as a dominant type of security in real estate financing transactions in Croatia, another commonly used type of security is the promissory note (debenture) with prescribed content and in the form of a private document with its content certified by the notary public. Promissory notes are widely used and accepted as a security for many different types of contractual relationships in Croatia.

4 Real Estate Taxes

4.1 Transfer Taxes

Under the Real Estate Transfer Tax Act (OG 115/16, 106/18), the subject of taxation is a real estate transfer/transaction, i.e., acquisition of the real estate (taxable at the rate of 3% of the real estate market value of in the moment of taxation). The only exception to this rule (i.e., to the definition of the object of taxation) is a real estate acquisition that is subject to VAT (at the standard rate of 25%), i.e., when the transaction is subject to the payment of the VAT then no obligation to pay transfer tax exists. The real estate transfer taxpayer is the acquirer of the real estate, and these tax rules equally apply to domestic and foreign natural or legal persons who are legally deemed equal in terms of payment of real estate transaction tax, unless otherwise provided under international agreement. For all tax advice in Croatia, only authorized advisors must be consulted.

4.2 Specific Real Estate Taxes

The Local Taxes Act (OG 115/16, 101/17, 114/22, 114/23, 152/24) regulates that the local government units are obliged to impose real estate tax (till January 1, 2025, the option of previous vacation home tax existed). At the moment of preparing this overview, real estate tax under said piece of legislation amounts from EUR 0.60 to EUR 8 per square meter of usable area of the real estate, depending on the decision of the municipality or city where the real estate is located. The taxpayers of this type of local tax are domestic and foreign natural persons and legal entities – owners of real estate on 31 March of the year for which the tax obligation is being determined. The Local Taxes Act provides 9 exemptions to the application of this type of tax (i.e., RE for permanent residence, RE in long-term lease, RE of public purpose and for

institutional residence, etc.).

5 Condominiums

5.1 Legal Framework for Condominiums

Condominiums do not exist in Croatian legislation as they do in foreign jurisdictions and no legal framework for such a legal regime exists. Since the ownership is legally unlimited in Croatia, it is not possible to fully implement ownership and management limitations characteristic for legal solutions for condominiums in other jurisdictions.

5.2 Rights and Duties of Co-Owners

N/A – see Section 5.1.

5.3 Liability of Co-Owners

N/A – see Section 5.1.

5.4 Rights and Duties of Condominium Associations

N/A – see Section 5.1.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

The primary source of law for commercial leases is the Act on Lease and Sale of Business Premises (Official Gazette No. 125/11, 64/15, 112/18, 123/24) which provides that the lease agreement has to be in a written form and prescribes elements and provisions it should contain – in addition to information for identification of the parties (name, address/registered seat, personal identification number) and of the premises (land plot number, land register file number, surface, etage, position, layout as well as all other relevant data), the lease agreement must contain provisions on business activities to be carried out in the premises, use of common equipment and common areas, the deadline for the handover of the premises to the lessee (tenant), terms of the lease, amount of the monthly rent, conditions and manner of the rent increase/decrease and on the time and place of entering into the lease agreement. Said act provides that the lease agreement entered into contrary to these provisions is null and void.

In addition to these mandatory provisions provided in the Act on Lease and Leases of Business Premises, commercial lease agreements can contain additional elaborate provisions detailing the terms of the individual lease (which is usually the case for leases of prime office market premises). They can vary depending on the type of the leased property and its features and level of equipment and facilities used by the tenants, specific needs of the tenant, their needs and requirements depending on the business activities and industry it operates in, whether and to which extent the fit-out-works will be carried out or not, what type of services will be provided by the lessor, types of security instruments to be provided, etc. Many lease agreements, especially more sophisticated ones in terms of lease relationship and obligation of parties are entered into in the form of a private document with its content certified by a notary public, in that way granting the lessor a higher level of legal protection in case of default of the lessee.

With respect to the form of the lease agreement concluded by the Republic of Croatia or by the local and regional government unit, the Act on Lease and Sale of Business Premises provides for those lease agreements that their content must be certified by a notary public, otherwise, they are deemed to be null and void.

The content of the residential lease (rent) agreement (rental agreement) is regulated under a separate piece of legislation, the Apartments' Rent Act (Official Gazette No. 91/96, 48/98, 66/98, 22/06, 68/18, 105/20) and was not analyzed within this overview as its focus is a commercial lease of business premises.

6.2 Regulation of Leases

Legal rules for certain leases vary depending on the type of property – for example, the Agricultural Land Act provides detailed rules on the lease of different legal categories of the property, including legal requirements for entering into lease agreements depending on the type of the leased property, its form, conditions, and the procedural rules to be followed in all cases. Another example is the Act on the Management of the Real Estate and Movable Assets Owned by the Republic of Croatia (Official Gazette No. 155/23) which provides detailed provisions on prerequisites for entering into a lease agreement, procedure of entering into a lease agreement, rules for sub-lease, conditions for execution depending on the purpose of the lease etc. for different types of properties owned by the Republic of Croatia – development construction land, apartments and business premises, building with land for the regular use of that building, hiking facilities, camps, non-evaluated construction land, residential facilities, real estate under special management regimes, and real estate of strategic importance for the Republic of Croatia, owned by the Republic of Croatia. Said act also provided that, exceptionally, the ministry competent for state assets is legally authorized also for the management of other real estate whose management is under special legislation entrusted to another authority if the spatial plan for such real estate (whether in a separate construction area and/or outside the boundaries of the construction area) provides construction of golf courses, hotels, hotel resorts, camps, sports facilities, and other similar commercial buildings.

6.3 Registration of Leases

Croatian legislation does not provide an obligation on registration of commercial leases in the land register. Since all entries in the land register are public, registration of the lease in the

land register provides visibility of the lease existence to everyone resulting in legal protection for the tenant to a certain extent – for example, in the case of sale of the leased real estate (although such protection exists also in case when the lease is not registered (since in the case of sale of the leased property the purchaser enters into the legal position of the previous owner [lessor], i.e., becomes the new lessor) by registration, the existence of the lease is publicly known to everyone, including the purchaser). However, it does not provide protection in all cases – for example, in the case when the lease is registered after existing, already registered hypothecation over leased property. In that case, if the real estate is sold in the enforcement procedure executed due to the lessor's default from its loan agreement, such lease (in addition to some other encumbrances), will be de-registered from the land register and the new owner will acquire the real estate free of such lease, unless otherwise agreed between the purchaser of the real estate in the enforcement procedure and the lessee, all as provided under applicable enforcement legislation (Enforcement Act). A similar situation is in the case of a bankruptcy of the lessor – the general rule under bankruptcy legislation is that the leases do not cease by opening the bankruptcy procedure, however, the bankruptcy administrator and the purchaser of the real estate in the bankruptcy procedure are entitled to terminate existing leases.

6.4 Termination of Leases and Renewals

Under the Act on Lease and Sale of Business Premises, each contracting party may terminate the lease agreement (both the fixed-term and the open-ended) at any time, if the other contracting party does not fulfill its obligations stipulated under the lease agreement or under the provisions of the said act.

The same act furthermore regulates that the lessor is entitled to terminate the lease agreement at any time, regardless of contractual or legal provisions on the term of the lease, in the following cases: (i) if the lessee (tenant), even after the lessor's written notice (warning), uses the business premises contrary to the lease agreement or if it causes considerable damage to the premises by usage without due care, (ii) if the lessee does not pay the due rent within 15 days from the day on which was notified by the lessor on the due payments, and (iii) if the lessor, for the reasons not attributable to the lessor, cannot use their other business premises where the lessor's business activities are conducted and therefore intends to use the premises occupied by the lessee. The lessor is entitled to termination of the lease agreement at any time, regardless of the contractual or legal provisions on the term of the lease, if the lessor does not hand over or maintain the premises in the condition as obliged to.

The Act on Lease and Sale of Business Premises provides that, if the lessor does not hand over the premises to the lessee in the condition stipulated under the lease agreement and under the provisions of the said act, the lessee is entitled to terminate the lease agreement, or to request a proportionate rent reduction. Additionally, the lessee is entitled to request from the lessor to conduct appropriate activities in order for the premises to be in agreed condition and if the lessor fails to do so by the appropriate deadline, the lessee is entitled to carry out all necessary works for that purpose, at the lessor's expense. The tenant is also entitled to termination if the lessor does not provide the premises within the agreed deadline.

If, during the term of the lease, it becomes necessary to carry out repairs on the premises necessary for the premises to be maintained in the condition in which the lessor is obliged to and which repairs are the lessor's responsibility and obligation to undertake, the lessee is obliged to notify the lessor in writing without delay and set an appropriate deadline for conducting the works. If the lessor carries out the work without notifying the lessor, the lessee is not entitled to compensation for such costs and is liable to the lessor for all damages caused by failing to notify, except if the works in question were of an urgent nature. If the lessor was appropriately notified but has failed to conduct the works to which were obliged to in said deadline, the lessee is entitled to carry out all necessary works for that purpose, at the lessor's expense, or to terminate the lease agreement. In general, the parties to the lease agreement are free to agree on different terms of lease termination, unless otherwise expressly limited by law. In practice, many lease agreements, especially more complex and sophisticated ones, have a more exhaustive and elaborate list of reasons for termination.

For the lease agreements concluded with the City of Zagreb, the city or municipality as the lessors for the real estate located in certain streets, parts of streets, or on certain squares for which it has been decided by said lessor's representative body that they can be used for carrying out only certain business activities (for example, certain traditional or scarce craft), the Act on Lease and Sale of Business premises regulates termination by virtue of law if the lessee unilaterally changes the intended purpose of the leased property.

With respect to the automatic (tacit) renewal of the lease, neither the Act on Lease and Sale of Business Premises nor the Civil Obligations Act (subordinate application of its general provisions on the lease agreement is provided for the business premises lease agreements not regulated under the Act on Lease and Sale of Business Premises) provide it. Such a renewal option must be agreed between the parties to the lease agreement.

Tacit renewal of the rental agreement is provided under the Apartments' Rent Act and was not analyzed within this overview as its focus is a commercial lease of business premises.

6.5 Rent Regulations and Rent Reviews

The Act on Lease and Sale of Business Premises contains only basic provisions on the rent and usually lease agreements provide more detailed provisions on the rent formula, its indexation, payment securities, and rules for its enforcement.

In addition to the case of the tenant's right to request proportionate rent reduction described in Section 6.4. of this review, the Act on Lease and Sale of Business Premises provides several other situations in which the full or proportionate rent reduction will be applied. For example, under the act, the lessee is not obliged to pay the rent during (i) repairs on the premises necessary for the premises to be maintained in the condition in which the lessor is obliged to and which the lessor is obliged to undertake and pay for, and (ii) works on public areas, the facade and the roof of the building, which resulted in preventing the lessee to use the premises. However, the lessee is not entitled to claim damage compensation for loss of profit in that case. Additionally, if the lessor was only partially prevented from using the premises, then will be entitled to a proportional rent decrease only.

Another similar situation provided under the same act is the one regulated under the provision stating that, in the term of the lease, the lessor is entitled to carry out the fit-out works in the premises or the works for the purpose of reducing energy and maintenance costs and is obliged, at least two months before the commencement of works, to provide written notice to the lessee informing on (i) the type and scope of works to be carried out, (ii) the duration of time for completion works, and (iii) the new amount of the rent.

Some pieces of legislation contain provisions on rent revaluation after a certain period (individually determined as per agreement of the parties, depending on the conditions of the lease agreement in question) – for example, the Agricultural Land Act regulates that said provision is a mandatory element of every lease agreement.

6.6 Services To Be Provided Together With the Lease

The Act on the Lease and Sale of the Business Premises regulates that the lessee is obliged to pay due costs of using common equipment and providing common services in the building where the leased premises are located unless agreed otherwise. It is considered that the compensation for said costs is not included in the rent unless otherwise agreed between the parties. In general, this rule is reflected and detailed in lease agreements, and in practice, the scope of services provided by the lessor depends on the type of building and the level of its quality and equipment, so they are individually agreed upon between the parties.

6.7 Fit-Out Works and Their Regulation

The Act on the Lease and Sale of Business Premises is silent on the matter of the fit-out works, so they are usually fully addressed in the lease agreement (from their scope, engagement of the parties in carrying out the works and their respective roles and responsibilities, value of the works and the potential compensation to ownership of the executed works and regulation of mutual rights and obligations after the termination of the lease).

On the most general and broad level regarding the tax implications of the fit-out works – the lessee could be entitled to claim deductible input tax with respect to the fit-out works as well as for them to be treated as tax-deductible expenses (since the fit-out-works are executed for business purposes [conducting tenant's business in the leased premises] if all legal requirements from tax legislation for such tax treatment are met). For all tax advice in Croatia, authorized advisors only must be consulted.

6.8 Transfer of Leases and Leased Assets

With respect to the transfer of the leased assets please see Section 6.3.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

Spatial planning is regulated under the Spatial Planning Act (Official Gazette No. 153/13, 65/17, 114/18, 39/19, 98/19, 67/23; Spatial Planning Act) which provides rules on spatial planning system: objectives, principles, and subjects of spatial planning, monitoring of the spatial situation and the area of spatial planning, spatial planning conditions, adoption of the Spatial Development Strategy of the Republic of Croatia, spatial plans including their production and adoption procedure, implementation of spatial plans, construction (building) land development, proprietary rules for construction (building) land development, and supervision.

Spatial planning is conducted according to the spatial plans, public documents with powers and status of secondary legislation which regulate purposeful organization, use, and function of certain areas including prerequisites for planning, development, and protection of the state, county, and local areas in Croatia, all with the aim to achieve goals of the spatial planning according to the spatial planning principles. Construction and all other spatial interventions and activities must be carried out in accordance with the spatial plans.

Spatial plans have the legal force of by-laws and exist on three levels: (i) the state level (urban development plan at the state level adopted/passed by the Croatian Government and all other spatial plans are adopted by the Croatian Parliament), (ii)

the county level (adopted by the county assemblies), and (iii) the local level (adopted by the city or municipal councils).

All spatial plans must be passed in accordance with the Spatial Planning Act and all spatial plans of all levels must also be mutually compliant and harmonized. All spatial plans of lower level must be harmonized with the spatial plans of higher level, spatial plans of a narrower area must be harmonized with the spatial plans of a wider area of the same level and the spatial plans of the same level must be mutually harmonized in the same manner as the spatial plans of different levels.

Spatial planning legislation comprehensively and in detail provides rules on their reach and scope. Spatial plans at the local level (city and municipality level) are the most detailed ones and are significant and valuable for construction as well as all other types of other spatial interventions. Local-level spatial plans are:

(i) Spatial development plan of the municipality/city – mandatory passed for the construction area of the municipal and city areas and the separate construction area outside the central settlement of a large city. It regulates a) the conditions of implementation of spatial interventions in the area within its scope for which no urban development plan is being passed and b) guidelines for producing the urban development plans whose scope is determined by the general urban development plan. This type of spatial plan also determines the area covered by the general urban development plans, the development urban plans, and the infrastructure corridors important to municipalities and cities.

(ii) General urban development plan – mandatory passed for urban construction outside the urban area of the large cities and remote construction areas. It regulates a) the conditions for all spatial interventions in the area within its scope for which the urban development plan is not being passed and b) the guidelines for planning the urban plan areas located within the area of this type of local spatial plan.

(iii) Urban development plan – mandatory spatial planning document for unconstructed areas and constructed areas intended for urban transformation and urban sanitation. It regulates the conditions for the implementation of all spatial interventions within its scope and, in addition to other mandatory parts, it must contain a) detailed plans of the division of its area to separate parts with respect to their purpose, b) display of plots intended for construction, and c) other conditions for use, planning, and construction in the area within its scope. The adoption of this type of local spatial plan is not mandatory for the area within its scope for which the spatial development plan of the municipality/city or the general urban development plan provides conditions for the implementation of spatial interventions in the area with the level of details prescribed for the urban development plan.

7.2 Can a Planning/Zoning Decision Be Appealed?

The general rule in procedures for the adoption/passing of all spatial plans is that a competent authority conducting the procedure must carry out the procedure which includes public discussion on the spatial plan proposal in which anyone can participate in a manner of providing opinions, proposals and remarks within the deadlines and the procedure as prescribed by the Spatial Planning Act. Once the decision on the implementation of an individual spatial plan is passed, an appeal can be filed on which the competent ministry (as the 2nd instance authority) decides, and an administrative dispute can be initiated against the 2nd instance decision. The same rules apply to the decision on the amendment, revoking, annulment, and/or extension of the decision on the implementation of individual spatial plans.

With respect to individual decisions for the purpose of construction passed within the legal framework of spatial planning legislation – location permit, the Spatial Planning Act also provides the possibility of appeal or possibility of initiation of administrative dispute (depending on the level of the authority which passed the decision) within the detailed procedure for its passing in all cases for which its passing is prescribed as a legal prerequisite for construction. Legal procedure rules for obtaining construction permits and operating permits are contained in detail in the construction legislation.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2025

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1 Real Estate Ownership

1.1 Legal Framework

Full ownership of real estate is recognized under Czech law. Ownership rights of real estate benefit from constitutional protection, which also sets forth crucial rules for expropriation – permitted only in exceptional circumstances, driven by the public interest, and subject to strict rules set forth by law and payment of compensation.

The Czech Civil Code (Act No 89/2012 Coll.), which came into effect in 2014 as part of the entire private law recodification, governs all matters related directly to real estate, including fundamental provisions for conveyance contracts, rights related to liens and encroachments, condominium rights and obligations, commercial leases, and others. Since the recodification of private law, no further major changes to real estate ownership regulation can be expected for some years to come.

In principle, any entity (a company or person) may acquire and own real estate in the Czech Republic with few restrictions. This means that not only Czech or EU residents, but also residents from third countries may acquire real estate in the Czech Republic.

1.2 Registration of Ownership

All land and most buildings in the Czech Republic are registered in the Real Estate Register (Cadastral Register), which is administered by the Czech State (through a specialized cadastral office authority). Records in the Cadastral Register are legally determinative, except in specific circumstances, such as proven fraud.

Ownership rights – including mortgages, easements, pre-emptive rights, and other in rem rights concerning real estate registered in the Cadastral Register – originate, change, and cease to exist upon their registration therein.

In addition to transfers under an agreement, the ownership title to real estate can also be acquired: (i) based on a decision of state authority; (ii) by operation of law; (iii) upon being built (in the case of buildings); (iv) through a public auction; (v) by positive prescription (the lawful (good faith) possessor of real estate is entitled to become its owner if it keeps the real estate in its possession for 10 consecutive years); and (vi) by other means (e.g., inheritance). In all these cases, the relevant change must also be registered in the Cadastral Register, the effect of registration is, however, of a declaratory nature only.

The ownership right of real estate that does not need to be registered in the Cadastral Register – such as minor constructions (such as fences) and underground constructions – follows a similar regime as those of movable assets. Nevertheless, there are some formal requirements that apply to all real estate irrespective of its need to be registered in the Cadastral Register (see below).

1.3 Publicity of Real Estate Register

The Cadastral Register contains information on land parcels (including information about any buildings constituting a part of the given parcel, if any), buildings, housing and non-residential units within condominiums, rights to build, and other real estate established by operation of law. It also includes geometric descriptions of land parcels and most surface constructions along with their classification.

The Cadastral Register is publicly available, and information on a particular real estate can be obtained through an extract, which represents proof of ownership of the given real estate or a right to it. An extract from the Cadastral Register contains, in particular, the following information about the real estate:

(a) identification of the owner(s), and their ownership shares,

(b) the surface area in square meters,

(c) type of protection applicable (such as a historical area, if applicable),

(d) reference to the purchase agreement or other title deed used as the basis for registering the current owner's title to the real estate in the Cadastral Register, including the file numbers under which such contracts or other documents are kept in the archives of the cadastral authority,

(e) restrictions on the ownership title to the real estate, i.e., mortgages, easements, rights to build, or pre-emptive rights – with a specification of the parties in favor of which the rights corresponding to such restrictions exist – the contracts or other titles under which such restrictions came into existence, as well as the file numbers under which such contracts or other documents are kept in the archives of the cadastral authority,

(f) other rights registered in the Cadastral Register to the real estate in question,

(g) an indication that the real estate or right vested in the real estate in question has been affected by ongoing judicial proceedings or proceedings before the cadastral authority.

The archives of the Cadastral Register represent an additional source of information regarding real estate.

A simplified extract is free and freely accessible on the web of the cadastral office. The official extract is easily accessible from every official administrative point of contact for a modest fee.

Similarly, all documents kept in the archives of the cadastral office are accessible either at the competent cadastral office or online. However, this is a special service restricted to registered users only.

1.4 Protection of Ownership

The principle of material publicity of entries in the Cadastral Register (introduced under the current Civil Code) has been applied since January 1, 2015. This means that each acquirer of real estate (or any right in rem to such property) who purchased it based on an asset deal for consideration and in good faith reliance on the correctness of the relevant entry in the Cadastral Register is protected against third-party claims, even if the previous entry into the Cadastral Register was incorrect.

Similarly, any person affected by any change of an entry in the Cadastral Register is entitled to challenge it. However, such a challenge, even if successful, can have a materially adverse effect on the registered owner only in specific situations and subject to satisfaction of certain conditions, such as timely registration of a "note on the dispute" (in Czech: poznamka spornosti) with the Cadastral Register. A note of disputability does not prohibit transfers of ownership, but any ownership transfer of real estate marked by a note of disputability would interrupt ownership in good faith.

The above is without prejudice to the general right of anyone to challenge an entry in the Cadastral Register that affects them. The outcome will, in such a case, be opposable only against the person who acquired the right after registration of the note of disputability in the Cadastral Register.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

It is possible and typical in the Czech Republic to structure deals both as direct sales of real estate (asset deal) as well as indirect sales by selling a shareholding in a special purpose vehicle company owning the real estate (share deal).

Asset deals are most common in disposals of real estate among private investors, whereas share deals are most common in business deals. Share deals have the following key advantages:

(a) share deals are subject to fewer formalities since the relevant share purchase agreement (SPA) must not be registered in a public register (unlike an asset deal, which must be registered in the Cadastral Register – after first filing the related application);

(b) the disposal is completed on one closing date (as opposed to an asset deal, which is only completed upon its registration in the Cadastral Register);

(c) even though the property transfer tax has been abolished in the Czech Republic, with retroactive effect from December 1, 2019, share deals continue to be less burdensome from a tax point of view (this especially applies to the application of VAT to asset deals, as the tax treatment remains unclear in specific cases, and asset deals may not benefit from an exemption, unlike share deals under certain circumstances);

(d) gains made on asset sales are generally subject to corporate income tax (if realized by corporations) or personal income tax (if realized by individuals) and will be taxed at the applicable rate (progressive rates of 15% or 23% for individuals, and a flat rate of 21% for corporations (a reduced rate of 5% apples to the income of certain investment funds, and 0% applies to income generated by specific pension funds of pension insurance institutions). Under certain circumstances, capital gains realized by individuals could be exempt at their level as well; and

(e) share deals have, in most cases, no negative impact on the contractual relationships of the SPV owning the real estate, as there is no change in the contracting parties (except for contracts with change of control clauses and similar undertakings).

In this respect, it should be noted that acquiring an SPV through a share deal involves other risks not necessarily related to the property, but to the SPV itself, such as past or even hidden corporate, contractual, or tax liabilities.

2.2 Share Deal

A share deal is a commonly used term for the disposal of a shareholding in a corporation. In terms of real estate, the two most common entities used are the limited liability company (in Czech spolecnost s rucenim omezenym) and the Czech joint-stock company (in Czech akciova spolecnost). Thanks to its simplicity and variability, a limited liability company is the most commonly used form while joint-stock companies are often used as a holding entity. There are no specific restrictions with respect to real estate holding entities and, as a result, other types of Czech or foreign entities are available to investors. Both entities can have only one shareholder.

In most real estate share deals the closing occurs within the same day as the signing since the transfer is completed and effective upon the execution of the SPA. For limited liability companies, the signed and effective SPA must also be delivered to the company; for transfers of book-entered shares in a joint-stock company, the transfer becomes effective upon registration in the Central Depositary of Securities. Although registering the transfer in the Commercial Register is mandatory, it is of a declaratory nature only.

The price for the shares (derived from the value of the underlying real estate owned by the SPV) is usually split between a full repayment of the shareholder's loans and the purchase price of the shares. The market standard is direct payment to the seller's bank account, which is done on the closing day.

The fees associated with a share deal are quite modest and include the costs of verification of signatures and registration

of changes in the Commercial Register.

2.3 Asset Deal

In asset deals, if the transfer relates to real estate that must be registered in the Cadastral Register (all land and most buildings), the transfer only becomes effective upon registration; if the ownership title to the real estate is not subject to registration in the Cadastral Register (if it is transferred by agreement), ownership is acquired on the effective date of the relevant agreement.

The transfer document (i.e., a purchase agreement) must properly define and delineate the land parcels and buildings to the extent stated in the law. Non-compliance with this obligation can result in a defective transfer. The transfer document must be in writing, with the signatures of both parties officially verified and located on the same document. Unlike many other jurisdictions, the involvement of a notary public is not required, and the transfer document does not have to be in the form of a notarial deed.

If the real estate is purchased by or sold to municipalities or public authorities, there are additional obligations and processes as set out in specific laws.

The mandatory registration of a real estate transfer in the Cadastral Register means there is a lag of approximately 25 days between the signing of the deal and its closing. As a result, the purchaser generally deposits the purchase price in an escrow account of a notary public or a bank, with the funds released to the seller only after successful registration in the Cadastral Register of the purchaser's title to the real estate.

The fees associated with an asset deal are a bit higher than the fees associated with a share deal, but they remain modest and cover verification of signatures, registration of changes in the Cadastral Register, and escrow charges.

2.4 Disposal Process

A standard real estate transaction usually starts with due diligence performed by the purchaser. In larger deals or deals where the participation of more institutional investors is expected, the purchaser's due diligence is preceded by the seller's own vendor due diligence, the outcome of which is shared with interested investors. Although the investors are allowed access to a data room in order to check the vendor report and present their bids, an in-depth analysis of all assets is typically only open to selected (winning) bidder(s).

A proper real estate due diligence will include a 10-year historical review of the acquisition title chain, a review of encumbrances, construction compliance, environmental issues, and all other aspects that are relevant to the nature of the property in question. While some local purchasers forego proper due diligence and rely solely on the information set forth in the Cadastral Register, clients are advised to conduct a full independent review of all matters that may interfere with their future intended use of the property. In addition, all corporate, financial, and tax aspects should be investigated by the purchaser as well, in order to limit the risk of undisclosed liabilities or other defects without a proper reduction of the purchase price.

Once due diligence has been successfully completed, the parties can launch negotiations over the share purchase agreement.

A purchaser wishing to protect its interests against undisclosed defects in the acquired SPV, underlying real estate, or shares thereon, must negotiate various remedies in the SPA either to improve the statutory rules on the seller's liability for defects or to replace it with purely contractual regulations (usually as monetary compensation for the decrease in the value of the acquired assets) since a common issue is that deficiencies in an acquired asset are not easily categorized as defects. The most common remedies consist of agreed remedy or claim processes, indemnities for known risks, and seller's post-closing covenants, which are secured by various schemes of deferred payments, escrows, guarantees, or contractual penalty clauses.

Several types of consent might be required, depending on the specific circumstances. They include:

(a) consent of a beneficiary of a pre-emption right,

(b) corporate consents, including consents of the Ministry of Finance or municipal assembly,

(c) consent of a bank in cases where a mortgage is vested in the real estate,

(d) spousal consent if the seller is married, or with a divorce in process, or

(e) architect's consent in the event authors' rights can apply with respect to the real estate.

For asset deals, the seller is obliged to hand over to the purchaser the original energy certificate pertaining to the real estate as well as complete up-to-date project documentation.

2.5 Registration of Change of Ownership

Both share deals and asset deals must be registered in their respective registers. Registration of a share deal is of a declaratory nature only; registration does not affect the signing and closing of the deal. On the other hand, registration of an asset deal is a mandatory condition for the transfer of the title (with respect to real estate that must be registered in the Cadastral Register).

Therefore, once the relevant transfer agreement with respect to an asset deal is executed at least one of the parties to the deal, if not both together, must fill in and file to the cadastral

office the application for registration along with the underlying transfer document. Procedural aspects of title and other record registration in the Cadastral Register are governed by the Act on the Cadastral Register (Act No. 256/2013 Coll.).

Once the cadastral office receives the application for registration of a change, it informs the owner of the subject real estate and other entitled persons that proceedings have been initiated. There is a 20-day mandatory wait period before a registration can be approved; this is to give sufficient time for all concerned parties to raise objections to the registration process, if necessary.

If all statutory requirements are met, the cadastral office will register the ownership right and inform the participants of the proceedings. The registration is retroactive – meaning that the transfer's effectiveness begins from the date of submission to the cadastral office of the application for registration, even though the registration process generally takes three to four weeks.

The fees for registration are symbolic.

2.6 Risks To Be Considered

Without prejudice to the principles and rules governing the Cadastral Register, it is important to note that there are still unrecorded encumbrances vested in real estate (such as utility protection areas, municipal or state pre-emption rights, unrecorded easements, and ownership rights acquired through acquisitive prescription or public paths, ways, and roads). A pledge over property (including real estate, movables, shares, and receivables) might exist or be created by a decision of the tax administrator or other competent public authority without the existence or creation of this pledge being necessarily apparent from a Cadastral Register extract.

Similarly, titles to even duly registered rights might still be successfully challenged and annulled due to, for example, a breach of mandatory rules protecting disposals with state or municipal property, a breach of public tendering rules, etc.

Moreover, prudent investors go beyond just legal due diligence, they may also arrange for technical due diligence as well as an on-site inspection. Such steps minimize unexpected post-closing complications and trouble. In case of any doubts, a smart purchaser will request strict and broad representations and warranties from the seller, together with liquid security, or will ensure that the appropriate W&I insurance has been obtained.

3 Real Estate Financing

3.1 Key Sources of Financing

Acquisitions of real estate in the Czech Republic are typically financed by a combination of debt and equity. Most debt financing for local real estate transactions is provided through secured bank loans.

Alternatively, finance leasing of real estate is also available on the market. In this case, a regulated financial institution acquires real estate from the original owner; at the same time, the financial institution concludes a long-term lease agreement with the ultimate investor. At the end of an agreed period, the investor is usually obliged to acquire ownership of the real estate at a pre-agreed residual value.

3.2 Protection of Creditors

Investors looking for a bank loan will most likely need to provide a wide range of security, including in most cases, a mortgage over all of the real estate, subordination of any shareholder loans, a pledge over cash and receivables, and other securities. A mortgage over real estate registered in the Cadastral Register is perfected upon its registration.

Enforcement of a claim is subject to obtaining an Execution Order issued by a court or a recognized arbitration proceeding or by the (future) debtor voluntarily executing a Deed of Enforcement. Private enforcement of a mortgage/pledge is also possible if explicitly agreed upon in the underlying mortgage/pledge agreement.

4 Real Estate Taxes

4.1 Transfer Taxes

The real estate acquisition tax was abolished in 2020 with a retroactive effect on all real estate property transfers effected as of December 1, 2019.

4.2 Specific Real Estate Taxes

The real estate tax is generally payable by every owner of land or a building located in the Czech Republic. Generally, real estate taxes are calculated according to the size of the property rather than based on market value. Consequently, real estate taxes in the Czech Republic are not as significant as they may be in other countries.

The tax base for land depends on the area of land occupied (residential land) or the price of the land (agricultural land). The tax on buildings depends on the size and number of above-ground floors of the building. Yearly rates for residential land range from CZK 0.20 to CZK 5 per square meter; agricultural land is taxed 0.25% to 0.75% of the average price of land per square meter; and the buildings are taxed CZK 2 to CZK 10 per built-up square meter. All the rates can be

multiplied by a coefficient from one to five, depending on the type and location of the property (for example, the yearly real estate tax for a 100-square meter apartment in Prague without a parking space or adjoining land would be CZK 1,200).

A real estate tax return generally must be filed by January 31 of the calendar year (with certain exemptions) immediately following a calendar year during which any changes occur to the real estate (including ownership change).

5 Condominiums

5.1 Legal Framework for Condominiums

Condominiums do exist in the Czech Republic and provide an important alternative to housing cooperatives. The Civil Code provides full regulation of condominiums.

Czech legislation characterizes a 'condominium' as a combination of exclusive ownership of a unit (apartment, or non-residential unit, represented by a delimited part of a building) with co-ownership of what is left after deducting all the units located in the building (common premises). The exclusive ownership of the unit and co-ownership of common premises are inseparable in the event of disposal. The unit has the status of immovable property and, as such, is registered in the Cadastral Register.

Where there is a condominium, there is usually a condominium association (in Czech spolecenství vlastniku jednotek). The law obliges unit owners to establish a condominium association in buildings with at least five units, where at least four are owned by four different owners. The condominium association then manages the building for all unit owners, provided that the unit owners form the highest decision-making body of the condominium association – the assembly of co-owners.

5.2 Rights and Duties of Co-Owners

The unit owner(s) is entitled to use the unit exclusively and to manage it at their will, with respect to other unit owners and their rights. However, the unit owner's management must not affect the common parts located inside the unit (including load-bearing walls, central heating, etc.) and the common premises reserved for his exclusive use (such as balconies). Unit owners must not jeopardize the functionality of such common premises through their interventions.

The unit owners have the right to use premises common to all co-owners (such as lifts, corridors, and stairs) as well as the obligation to follow the rules issued by the condominium association for common premises management. This obligation, however, is conditioned by the owners' acquaintance with the content of these rules. Furthermore, the unit owners are obliged to contribute to the management of the building in proportion to their co-ownership share (generally according to the proportion of their unit's floor size to all units in the building).

We also note that a court may order the sale of a unit of an owner who breaches a duty imposed on them by an enforceable court decision in a manner substantially limiting or precluding the rights of other co-owners.

5.3 Liability of Co-Owners

Once a condominium association is established, all unit owners are obliged to guarantee that the condominium association's debts will be paid. This obligation was introduced to protect debtors since the rights and duties of a condominium association are strictly limited to the "usual needs" of the building and its management and, as a matter of example, even though its liabilities are financed by contributions of the unit owners, the assembly of the condominium association can decide not to collect these contributions.

5.4 Rights and Duties of Condominium Associations

Czech law sets out that a condominium association is a legal entity determined by its purpose, i.e. to manage the building and the land plot underneath the building. "Management" includes all activities to which unit owners are not bound to, but that are necessary or appropriate for the proper care of the managed real estate and maintenance of the common premises. It means that all activities of the condominium association as well as all the rights and duties that are vested in it must be directed toward this purpose.

The condominium association is entitled to acquire rights and commit to obligations, but only for the purpose of managing the real estate. The condominium association must not carry on business or participate directly or indirectly in the business activities of its members, as that is not in line with its purpose.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

Commercial leases in the Czech Republic are private agreements; a written form is not mandatory.

A standard commercial lease agreement is usually very detailed and overrules non-mandatory statutory provisions. It generally addresses in particular:

(a) proper identification of both parties, of the real estate in which the leased premises are located, and clear identification of the leased premises,

(b) agreed purpose of the lease including agreed location(s) of the tenant's signage,

(c) amount of rent and annual review,

(d) amount of private charges and common service charges paid by the tenant and their precise scope and calculation,

(e) lease term – most commercial leases are concluded for a definite period of time and give the tenant only a very limited possibility to prematurely terminate the lease,

(f) renewal clauses, rights of first refusal, expansion options as well as other options that give the tenant some flexibility with regard to, in particular, the size of the premises,

(g) landlord's financial incentives and fit-out contributions (if agreed),

(h) sublease and setoff restrictions,

(i) security provided by the tenant in the form of a bank guarantee, corporate guarantee, or cash deposit, generally amounting to three- or six-monthly payments, and

(j) the division of maintenance and repair obligations (landlords are usually responsible for structural repairs and maintenance of the common premises).

6.2 Regulation of Leases

Although the Civil Code regulates leases, the provisions applicable to commercial leases are mainly non-mandatory, and contractual parties can freely deviate from the statutory provisions.

This is not the case for residential leases. Here, contractual parties may only deviate from statutory provisions for the benefit of the tenant. Although rents are not regulated, the landlord cannot freely increase an agreed-upon rent and must follow certain specific rules.

6.3 Registration of Leases

If the subject of the lease is registered in the Cadastral Register, the lease agreement may then be registered in the Cadastral Register, but it is not a legal prerequisite. This decision is left up to the parties and is rarely utilized. The registration process is burdensome and the parties tend not to be willing to disclose the agreed commercial terms to third parties (see 1.3 above – Publicity of real estate register).

6.4 Termination of Leases and Renewals

Most commercial leases are concluded for a definite period of time, with limited possibilities for the tenant to prematurely terminate the lease. These tend to be strictly limited to only a few termination reasons specified in the lease agreement. Statutory termination reasons – which are vague and non-mandatory – are in most cases replaced by contractual terms.

Typically, a party may terminate the lease if the other party grossly violates its obligations under the lease agreement or goes bankrupt. The landlord is usually entitled to prematurely terminate the lease if the tenant is in default with payment of the rent or service charges, if the tenant uses the subject of the lease contrary to the agreed use, or if the tenant subleases the subject of the lease or a part of it without the landlord's prior consent, etc.

We note in this respect that during an insolvency proceeding the insolvency administrator can prematurely terminate a lease without being bound by statutory or contractual terms.

Similarly, parties generally replace the lease renewal rules set out in the Civil Code with more sophisticated and bespoke contractual terms.

6.5 Rent Regulations and Rent Reviews

The parties are free to determine the rent amount. Czech law sets no limitations on rent with respect to leases of commercial premises.

In retail commercial leases, turnover rents are commonly used.

Annual rent reviews are based either on European harmonized indexes (such as MUICP), with respect to leases denominated in EUR, or the Czech consumer price index published by the Czech Statistical Office, for leases denominated in CZK.

Unless there is a mechanism for a change or increase of the rent in the lease agreement, such as an indexation clause, the amount of new rent is subject to the parties' agreement.

6.6 Services To Be Provided Together With the Lease

As a rule, all costs related to the leased premises and/or the entire real estate paid by the landlord are recoverable from the tenant (including real estate tax, insurance, etc.), if agreed in the lease agreement. However, the landlord cannot recover private charges (electricity, water, telecommunications) from the tenant at a higher amount than the sum actually paid by the landlord to the service providers, unless the landlord is officially authorized to commercialize such commodities.

Tenants are obliged to pay a pro-rata share of the common service charges according to the size of the leased area, usually as regular fixed advance payments that are reconciled after the end of the respective year.

With respect to the actual use of utilities consumed in the premises, tenants pay the costs according to consumption, either measured by separate meters or calculated on the basis of the size of the leased area.

6.7 Fit-Out Works and Their Regulation

The tenant may carry out fit-outs, improvements, and alterations to the leased premises only with the landlord's prior consent. Landlords usually require a copy of all documentation related to alterations and improvements to be submitted and maintain the right to inspect how the works are performed and to stop the performance of any works if they are not carried out in accordance with the provided specifications or rules and regulations set forth by the landlord or competent authority.

The related permits are usually the tenant's responsibility.

For tax reasons, the tenant is, as a primary option, requested to surrender the leased premises in the same condition as at their handover at the beginning of the lease. Any other situation has various tax impacts on both the tenant and landlord.

The tenant can only be reimbursed for the costs of improvements from the landlord by agreement. If the landlord consented to the improvements but did not undertake to reimburse the tenant, the tenant may obtain compensation for the increase in value of the leased premises at the end of the lease. The increase in value is to be determined by the parties (on the basis of the costs incurred by the tenant) or by an expert if they fail to agree.

If the tenant's improvements carried out in the premises meet the statutory definition of technical improvement and the landlord agrees not to increase the acquisition book value of the real estate, the tenant may depreciate the costs of improvements of the leased premises performed and paid for by the tenant.

6.8 Transfer of Leases and Leased Assets

As a general rule, the tenant is entitled to assign wholly or partially its rights and obligations under the lease agreement, or to sublease the premises, but only with the landlord's prior written approval. The landlord's approval is very often granted even in advance for a tenant's intragroup assignments or subleases.

A share deal has no negative impact on the lease relationship, as there is no change of contractual party (unless the lease agreement contains special covenants of the landlord in this respect, which is rather unusual).

With regard to an asset deal, under statutory provisions of the Civil Code if the owner of the leased premises (and/or real estate) changes, the rights and duties arising from the lease agreement pass to the new owner by operation of law, and none of the parties are entitled to prematurely terminate the lease for this reason. This rule applies to the new owner – unless the new owner had no reasonable cause to doubt that the purchased real estate was free of all leases (which would be very unusual as regards business leases).

Nevertheless, if the landlord transferred ownership of the leased premises (and/or real estate), the new owner is not bound by any stipulations on the landlord's duties which are not provided by a statute. However, this rule does not apply if the new owner was aware of the former landlord's stipulations. Because of this more and more tenants now oblige the landlord to ensure that the potential new owner has been duly informed about the terms and conditions of their lease.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

Construction activities in the Czech Republic are subject to complicated and burdensome zoning and construction regulations set forth in myriad laws and regulations that apply to the design, appearance, and method of construction. A new Construction Act enacted in 2021 entered into full force on July 1, 2024. Nevertheless, neither systems for digitalization of the permitting process exist nor are the implementing regulations in place and the construction administration seems not to be fully operational in at least the second half of 2024.

The new Construction Act aims at the digitalization of all permitting processes. Although the adoption of new zoning plans for cities and their changes did not change in fact, the former default system of a zoning permit and building permit has been abandoned and the entire permitting process considerably simplified.

The applications for the project permit have to be submitted electronically via the Builder's Portal which triggers the entire permitting process during which the building authority collects all the statements, requirements, and comments from all the involved administrative bodies and other participants, and implements them into its project permit delivered electronically to the investor. This is without prejudice to the investor's right to take care of the above process collect all the documents by himself and submit them to the building authority to speed up the process and gain control over terms incorporated into the project permit. Further, the involved administrative bodies are obliged to coordinate their statements and requirements and issue consolidated statements. However, nothing has changed about the necessity to obtain the opinions of the owners of neighboring real properties and utility network operators.

A building may only be used after issuance of the use permit that specifies the sole purpose for which the building can be used. The use permit is only issued if the building was constructed in compliance with the issued project permit and the project documentation is approved by the building authority during the permitting proceedings.

7.2 Can a Planning/Zoning Decision Be Appealed?

The project permit may be subject to an appeal by any party to the proceedings, typically by owners of adjacent properties. The deadline for filing an appeal is 15 days from delivery of the project permit. The scope of objections to be revised on appeal is limited as the appellate body shall disregard objections that could have been raised earlier by the appellant as well as objections inconsistent with previously given consent or concluded planning contract.

Newly, the appellate body shall change the project permit if it is contrary to the law instead of referring the file back to the first instance building authority as it was standard practice in the past. This should also shorten the time until a final decision is issued.

The administrative action against the decision of the appellate body could be filed, however it has no automatic suspension effect.

7.3 Energy Performance of Buildings

Any construction of new buildings, major renovation, etc. requires prior issuance of an energy performance certificate. Certificates must also be obtained and handed over to the purchaser within the sale or lease of a building, residential or non-residential unit, or any part of it.

Certificates can only be issued by an authorized expert and are valid for 10 years from the date of execution or until the first major renovation/reconstruction of the real estate for which it was issued.

Effective from July 1, 2015, large entrepreneurs are obliged to prepare an energy management audit (energy management is understood as a set of technical equipment/facilities and buildings serving for energy consumption) on buildings used or owned by them. The energy audit should be updated at least once every four years.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2025

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1 Real Estate Ownership

1.1 Legal Framework

As a typical example of a first-generation human right, the right to property has been consistently protected by all constitutions adopted since the Greek War of Independence. Today, the fundamental right to property, whether in the form of real estate or movable property, is enshrined (while simultaneously confined) in art. 17§1 of the Constitution of 1975/1986/2001/2008/2019: "Property is under the protection of the State; rights deriving therefrom, however, may not be exercised contrary to the public interest."

At a statutory level, the protection of property has mainly taken the form of the different real rights (also known as "rights in rem") regulated in the third section of the Greek Civil Code (GCC) entitled "Law of Real Rights". GCC art. 973 establishes a numerus clausus of real rights, all of which vest in their holder legal, direct, and erga omnes power with respect to property. Amongst these rights, the ones applicable to real estate are:

- Ownership (GCC art. 999 et seq.): the fullest, all-encompassing real right which consists in using the property in any legal manner. Essentially identified with the property itself, ownership is best described as a jus in re propria (right in one's own property), as opposed to the qualified nature of the rest of real rights, which grant a jus in re aliena (right in the property of another) and are therefore viewed as encumbrances of ownership.
- Servitudes (GCC art. 1118 et seq.): the rights attached either to another estate (predial servitudes) or a person (personal servitudes) which consist in enjoying one or more benefits from the substance of someone else's property (e.g., a right of way). Usufruct, the right to fully use and derive profit from someone else's property without altering its substance, is the most representative case of personal servitude, specially regulated in the GCC (art. 1142 et seq.).
- Mortgage (GCC art. 1257 et seq.): the right of a creditor to collect their claim with priority from the value of someone else's real estate property. It is the most traditional example of a security interest.

The above provisions of the GCC have remained virtually unchanged since the entry into force of the code in 1946. However, certain additional real rights have been fashioned from time to time by means of special laws, the most significant of these (from an investor's point of view) being the so-called "surface right" introduced by Law 3986/2011. This right applies to certain types of public properties and grants powers similar to ownership exclusively over the buildings constructed thereon, derogating from the superficies solo cedit principle of land ownership according to which the owner of the land is also the owner of the buildings above it.

Finally, apart from real rights, powers of usage and possession of real estate property may come in the form of contractual rights (rights in personam), such as the rights deriving from a lease agreement.

As to the potential subjects of all the aforementioned real rights, these generally include all natural and legal persons, whether they be Greek or foreign. Nonetheless, for reasons of national security, Law 1892/1990 prohibits the acquisition of real, but also contractual rights in designated border areas (which admittedly cover a significant part of the country) to national and legal persons who are nationals of or seated in a country outside the EU or the EFTA. This prohibition also extends to the purchase of legal entities owning properties in border areas. The persons concerned may apply for permission to acquire real or contractual rights in such areas before a special administrative committee. The specific conditions and supporting documents for the issuance of the relevant permission are described in the recent Joint Ministerial Decision no. 114/497810/2024.

The remainder of art. 17 of the Greek Constitution (§§2-7) is dedicated to balancing the conflict between the right to real estate property and the public interest through the process of expropriation, which results in the deprivation of private persons of their property. These rules are further specified in Law 2882/2001 ("Code of Expropriation of Immovable Property"). The main principles governing expropriation in Greece are the requirement of a public interest which renders expropriation necessary (in line with the constitutional principle of proportionality), a full (as opposed to a merely "just") compensation corresponding to the value of the property, the determination of this compensation by the competent civil courts on a provisional and/or a final basis and its payment at maximum 18 months following the court decision, as well as the consummation of the expropriation process only upon payment of the full compensation.

In closing this introductory section, here is a little snapshot of the Greek real estate market today: after a long decade of stagnation due to the 2009 debt crisis and having already recovered from the COVID-19 outbreak, it is continually showing vibrant signs of growth.

The high level of demand for properties is illustrated by the following data: the total number of building permits issued in Greece from August 2023 to August 2024 was higher by 10,5% compared to the previous twelve (12)-month period, while house prices across the country saw an increase of 13,4% within 2023 and a total 71,6% increase from 2017 to 2024 (sources: Hellenic Statistical Authority, Building Activity Survey: August 2024, 28.11.2024, e-kathimerini, House price

increase of 90% in eight years, 18.12.2024). Besides, Attica's housing market has seen a 90% increase in sale prices since 2017 (e-kathimerini, House price increase of 90% in eight years, 18.12.2024).

In recent years, the demand for residential properties has skyrocketed, pushing up prices accordingly. In order to address the matter of affordable housing, the government introduced several initiatives (such as the program "My Home", ended in September 2023, and, currently, "My Home II"). In parallel, the framework of the Golden Visa scheme (i.e., the immigrant investor program) was recently updated (art. 64 of Law 5100/2024) with increases in the minimum value thresholds for qualifying under the program and the introduction of new restrictions (such as a minimum floor area, allowed uses, a provision that the properties acquired may not be used for short-term leasing, e.g., through Airbnb).

Apart from housing, a significant portion of both domestic and foreign investment volumes are channeled into developing new hotels, villa complexes, and Integrated Tourist Resorts in different locations. Finally, the Ellinikon project, the breakthrough urban regeneration vision in the Athens Riviera is already coming to life and is anticipated to become one of the key drivers of the Greek economy in the near future.

1.2 Registration of Ownership

Pursuant to GCC art. 1198, registration of the relevant legal acts in public records is a precondition for the valid establishment and transfer of all real rights on real estate properties. There are currently two systems of publicity operating in parallel: the traditional so-called system of "registrations and mortgages" (GCC, Regulatory Decree 19/23.07.1941, Royal Decree 533/1963) and the newer system of the National Cadastre (Laws 2308/1995 and 2664/1998). It is the intention of the Greek state to fully replace the system of registrations and mortgages with the undeniably superior system of the cadastre. At this point, larger parts of the country are transitioning to the system of the National Cadastre, but a significant part of the country is still governed by the Land Registry regime.

For the latter regions -and until the system of the National Cadastre is implemented in these areas as well-, the system of registrations and mortgages, represented previously by the competent Land Registries, is now operating through the competent Cadastral Offices. It is noted that the Land Registries are now fully abolished. The registrations and mortgages regime is structured around the persons holding real rights in a specific area, and searches therein are conducted by reference to the holders' identities. The records are kept in a physical or digital form (books or digital platforms), depending on the progress of the digitalization process.

On the contrary, the National Cadastre, represented by the competent Cadastral Offices, is organized by reference to each real estate property (land plot). Cadastral records are kept digitally in a unified database. Cadastral Offices are run by the legal entity under public law with the name "Hellenic Cadastre", established by Law 4512/2018 and supervised by the Ministry of Digital Governance.

Registration is generally not required for the establishment or transfer of contractual rights. However, in the case of a long-term lease agreement of more than nine years, future owners of the real estate property are only bound by the lease if this has been registered in the public records (GCC art. 618). Conditions and exceptions apply.

1.3 Publicity of Real Estate Register

In the case of Cadastral Offices still operating under the old system of registrations and mortgages (ex Land Registries), there is no absolute clarity as to whether the law offers the right to research their (physical) records to all individuals with properties registered therein, or only to certain categories of professionals (hence the divergent opinions Nos. 7/2020 and 69/2020 of the Prosecutor of the Supreme Civil and Criminal Court and the Legal Council of the State, respectively). The general practice is that the records are made available to lawyers, and interested individuals accompanied by their lawyers and bailiffs. It should be noted that a process to digitalize the records of all Land Registries has commenced; so far, only a few Land Registries have completed the process, as the project is still at an early stage.

Pursuant to Ministerial Decision 11206/2021, records of the National Cadastre are available either through in-site research at the computers of the Cadastral Offices, or through remote research in its database. In-site research is permitted to lawyers, bailiffs, notaries, and engineers (under different restrictions), while remote access is also granted to all other persons but only in relation to the registrations that concern them.

1.4 Protection of Ownership

The primary legal remedies established for the protection of ownership are the declaratory action (art. 70 of the Greek Code of Civil Procedure), rei vindicatio (GCC art. 1094), and actio negatoria (GCC art. 1108). A declaratory action is filed against a person who merely questions the ownership of the claimant, with the request that the claimant be officially recognized as an owner vis-à-vis the defendant. Rei vindicatio (loosely translated as a "direct claim") is used to proceed against a person who unlawfully possesses or occupies a property, depriving the owner of such possibility, and results not only in the recognition of the owner's right but also in the recovery of the property. Finally, actio negatoria (loosely translated as a "negative claim") is filed in cases where the owner, although not absolutely forced out of their property, is unlaw-

fully disturbed in the full enjoyment of their right of ownership by an offender, and the request consists in the cessation of the nuisance and/or the omission of a future nuisance.

In the system of registrations and mortgages, a false or inaccurate entry does not prevent the true owner of a property from successfully protecting their ownership using the above remedies. Registration of the relevant legal act (e.g., a sale and purchase agreement, an act for the acceptance of an inheritance) only constitutes one of the conditions to be fulfilled for the transfer or establishment of a real right on a real estate property, and it does not guarantee itself said transfer or establishment. Also, entries do not facilitate the proof by the registered holder that they are indeed entitled to the real right in question: they would still have to prove in court the rest of the conditions prescribed by law for the acquisition of their right. Finally, persons who accept the entries of the system in good faith and proceed to legal transactions relying thereon are generally not protected. For example, the purchaser of a property from a person who appears to be its current owner by means of a sale and purchase agreement with the previous owner, which is in fact null and void, will not acquire ownership on the grounds of them trusting in the public records, save for very limited and rather marginal cases (e.g., if the registered sale and purchase agreement between the previous and the current "owner" is null and void due to it being fictitious).

Conversely, the initial entry for every property in the National Cadastre becomes "final" after the lapse of a specific time period during which it can be challenged, which differs from area to area. Thereafter, entries produce a non-rebuttable presumption of accuracy, which means that the claims in rem (a declaratory action or a rei vindicatio) of the true owner of the property are erased. The true owner is limited to monetary claims against the inaccurately registered owner, and may only reclaim the property itself if it has not yet been transferred to another person for consideration. to-date, this presumption only applies to a few regions of the country. For all subsequent entries, a rebuttable presumption of accuracy is established: future registered holders of real rights on the same property will not bear the burden to prove the rest of the conditions (other than the registration) for the acquisition of their right; the opposing party will have to prove their absence. Finally, good faith in the previous entries of the National Cadastre benefits the person who relies thereon to acquire a real right, even if these entries are proven to have been inaccurate.

Apart from filing a remedy for the direct protection of their ownership, owners may, alternatively or jointly, seek the protection of possession of their property against potential offenders, pursuant to GCC arts. 987 and 989. The actions related to possession not only manifest the advantage that possession is easier to prove than ownership (especially under the system of registrations and mortgages) but can also be accompanied by a request for interim measures (art. 733 of the Greek Code of Civil Procedure).

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

Acquisition of real estate may come in the form of either a direct acquisition of real rights on the desired property(-ies) by the investor (asset deal) or an indirect structure, where the investor gains control over a legal entity holding such right through the purchase of its shares (share deal).

Share deals tend to be more preferred in the business world for a number of reasons. Their popularity is mainly attributed to the following features that distinguish them from asset deals:

- They are freed from the formalities of an asset deal, as sale and purchase agreements for the acquisition of shares are not required to be drafted by means of a notarial deed or registered with a Cadastral Office. They are therefore more straightforward, and investors may not only acquire but also dispose of real estate in a quicker and simpler manner.
- They do not entail notarial or registration fees or incur much lower taxes related to the transfer of shares.
- The insertion of a legal entity between the investor and the real estate asset, usually in the form of a capital company, comes with all the benefits of a separate legal personality, subject to rare cases of lifting of the corporate veil. That is, not only implications related to the specific business venture that is the acquisition and development of one or more real estate assets for a specific purpose will not affect the investor directly (at least not from a legal point of view), but also the business venture is further transferable as a whole. This is one of the reasons why Real Estate Investment Companies (REICs) tend to set up separate subsidiaries for their different projects.
- The existence of any (not regularized) illegalities of buildings on the purchased property will not threaten the validity of a share deal, whereas an asset deal with such objects would be null and void (see Section 2.4).

Although more inexpensive and effortless in terms of the actual deal, it cannot be overlooked that purchasing a company that owns a real estate property involves risks not only related to the property but also the company itself. In addition, the formalities of an asset deal may be troublesome, but could potentially reveal significant findings, especially through the involvement and expertise of legal professionals (both lawyers and notaries), who would be qualified to notice abnormalities or insufficiencies in the property's documentation. In this sense, multifaceted, meticulous, and sophisticated legal due dil-

igence becomes of vital importance in the context of a share deal. Lastly, maintaining the purchased company naturally means embracing an additional set of corporate and accounting obligations.

2.2 Share Deal

A share deal consists of acquiring shares in, and thus gaining control over, a company owning (or holding any other real right on) the desired real estate property. These companies are usually capital companies, primarily in the form of a Societe Anonyme (SA) or a Greek Private Company (PC). They might constitute either special-purpose entities, with the limited function of owning the property in question, or actually engage in business activities. The acquisition of shares is achieved through a sale and purchase agreement between the old and the new shareholder(s).

Before entering into the agreement and in order to assess the risks of the transaction, it is an essential part of the process for due diligence to be conducted on behalf of the prospective purchaser. Depending on the target company's nature, size, history, activity, etc., varying types and degrees of due diligence may be required, including legal, financial, tax, operational, commercial, environmental, and others. Special due diligence of legal and technical character is carried out on the company's real estate assets (see Section 2.6).

In the context of the company's legal due diligence, it is investigated whether the company has been lawfully incorporated and operates in accordance with the corresponding corporate legislation (Law 4548/2018 for SAs and 4072/2012 for PCs), whether it complies with any applicable corporate governance or regulatory requirements (Law 4706/2020, as in force) and whether there are any provisions in the companies' Articles of Association or call options that may prevent, or encumbrances on the shares that may devaluate the transaction. Also, a review of the company's material contracts (e.g., loans, guarantees, insurances), employment policy, data protection policy, pending trials, etc. is performed. It is especially important to verify if the company has taken all measures in order to be exempt from the Special Real Estate Tax (EFA) (see Section 4.2).

Following the due diligence, should the purchaser wish to proceed with the transaction, the sale and purchase agreement for the acquisition of the shares is drafted and executed. Law 4548/2018 on SAs does not prescribe a particular form for this agreement, while Law 4072/2012 on PCs only requires that it be written; therefore, the common practice is that a private document is signed, without the need to involve a notary public. In the case of SAs, the transfer of shares is then registered in a special company record (the shareholders' record) along with the names of the contracting parties, and either a new share certificate is issued in the name of the purchaser or a relevant note is made on the existing certificate. Please note that as per art. 184 of Law 4548/2018, starting from January 1, 2020, all bearer shares issued by Greek SAs are mandatorily transformed into registered shares. Different registration procedures apply with regard to listed shares. A very similar procedure is followed for PCs.

If, after the transfer of shares, the purchased shares, the company itself, or its real estate properties are revealed to fall short of what the parties had agreed (e.g., the purchaser discovers that the company is in debt or faces regulatory implications or its properties are subject to restrictions that they had not been informed of when entering into the deal), the provisions on the so-called "substantive" and "legal" defects of the object of a sale apply (mutatis mutandis), granting a – far from negligible – set of claims against the seller (see Section 2.6). However, a prudent purchaser is advised to not rest on the protection of the law mainly because, oftentimes, these claims would be activated (or at least realized) after the sale price has been paid, and also not all deficiencies of the purchased company could be easily categorized as substantive or legal defects. For this reason, additional protection is ensured through the inclusion of specific terms in the sale and purchase agreement, which incorporate the findings of the due diligence and contain representations, conditions precedent (e.g., deferred payments until the seller succeeds in removing an existing third-party right, such as a mortgage, from the company's property), warranties (which guarantee the full spectrum of claims against the seller irrespective of whether they are in fault or not), indemnities and penalty clauses.

As regards taxation, share deals are exempt from indirect taxes (VAT, stamp duty) and transfer taxes, save for a 0,1% Sale Tax levied upon the seller of shares listed in the Athens Stock Exchange (art. 9 of Law 2579/1998, as amended by art. 50 of Law 5073/2023). For the remaining part, the seller of shares who is a natural person is subject to a Capital Gains Tax, which is calculated at a rate of 15% of said capital gains (art. 43 of Law 4172/2013). If the seller is a legal person, a business income tax is imposed on the capital gains instead, at a rate of 22%; however, an exemption applies in the case that the legal person transferring the shares is a tax resident of Greece and maintains at least 10% equity holding in the company whose shares are being transferred for at least 24 months.

Lastly, a share deal could be concluded through a merger of a company interested in acquiring the real estate property (or one of its subsidiaries) with the owning company, in which case special rules apply (Law 4601/2019).

2.3 Asset Deal

For the process of an asset deal preceding the execution of the sale and purchase agreement by means of a notarial deed and the risks to be considered by the purchaser, please refer to Section 2.6; for the ways in which such risks are usually

addressed in the agreement, please see the relevant paragraph of Section 2.2 above, as these are common in share and asset deals; for details on the notarial deed itself and relevant fees, see Section 2.4; for the subsequent registration process and its fees, refer to Section 2.5; for applicable transfer taxes, please check Section 4.1.

2.4 Disposal Process

As explained above, the involvement of a notary public is not needed for a share deal, whereas an asset deal would only be valid if performed by means of a notarial deed.

Apart from the sale and purchase agreement for the real estate property, a series of other documents are required by law for the conclusion of the asset deal by means of the notarial deed and are typically annexed thereto. These include, among others:

• Certificates of payment of taxes related to the ownership of the property (i.e., ENFIA – see Section 4.2) for the years before the transaction, as well as proof of payment of the applicable transfer tax (FMA – see Section 4.1).

• The Certificate of Completeness of the Building's Digital Identity, by means of which an authorized engineer declares that the "Building's Digital Identity" has been completed. The "Building's Digital Identity" includes, inter alia, building permits, and relevant diagrams, energy performance certificate, if applicable, etc. (art. 52-61 of Law 4495/2017).

• The seller's solemn declaration and an engineer's certification that a) the property is a vacant land plot, or b) that the building(s) existing thereon are legal, or c) that any illegal buildings existing thereon have been duly regularized. The engineer's certification is now included in the Certificate of Completeness of the Building's Digital Identity. Please note that, as a general rule set in art. 82 of Law 4495/2017, transactions for the transfer or establishment of real rights on properties with illegal (or not regularized) buildings thereon are absolutely null and void. However, this prohibition does not, interestingly, cover deals for the acquisition of shares in companies that are already lawful owners of said properties.

Special documents might be required for reasons associated either with the subjects of the transaction (e.g., an insurance clearance certificate when a seller is a natural person performing business activities or any legal person), the natural or legal status of the property (e.g., a certificate of non-burnt land for private forests and forest expanses) or both (e.g., special administrative permission for foreign transferees of properties in designated border areas – see Section 1.1).

A breach of duty by the notary public who has agreed to perform the transaction may result in their civil liability, disciplinary consequences, and, in special cases (e.g., the intentional non-attachment of the aforementioned solemn declaration and engineer's certification to the notarial deed), is treated as a criminal act.

Finally, pursuant to Ministerial Decision 111376/2012, notarial fees are calculated as an aggregate of certain standard fees (EUR 20 for the first page and EUR 5 for each of the other pages of the deed) and a progressive fee at a rate ranging between 0,80% and 0,10% on the higher of the objective price (see Section 4.2) or the price of the property agreed between the parties. Notarial fees are also subject to VAT.

2.5 Registration of Change of Ownership

As previously mentioned, registration of all legal acts resulting in the transfer or establishment of real rights on real estate property, a primary example being a sale and purchase agreement for the transfer of ownership, must be registered with the competent Cadastral Office.

Registration is usually complete shortly after the notarial deed has been brought for registration, subject to delays caused by the process of reviewing the legality of the legal act (see below) and the understaffing of certain Cadastral Offices. In any case, for legal purposes such as the determination of the priority of real rights, it is the time of application for the registration of the (valid) legal act that is of consequence.

Registration fees apply and are calculated based on a rather complex structure of standard and proportional fees and tend to differ slightly for (ex) Land Registries and Cadastral Offices. Indicatively, art. 6 of Law 4512/2018 provides that a fee at a rate of 0.5% or 0.6% on the value of the transferred property is payable for the registration of sale and purchase agreements with the Cadastral Office.

Finally, the personnel of the competent registration authority are not commissioned to accept and register all legal acts brought before them in an unquestioning manner; however, their review is limited by law and its extent depends on the respective system that operates in each area. For the areas in which the system of registrations and mortgages still operates, the review of the registrants is generally formal, mainly focused on the confirmation that all required documentation has been submitted, and does not extend to the examination of the documents' validity (art. 13 of Royal Decree 533/1963), save for certain cases of blatant nullity. On the other hand, for the areas in which the cadastral system operates, and in service of the principle of public faith in cadastral registrations, registrants proceed to a deeper review of the legality of the legal acts brought before them, verifying their suitability to produce the desired legal consequences (art. 16 of Law 2664/1998). In both cases, a breach of the registrants' duties (e.g., the registration of a blatantly null and void agreement) may incur their civil liability, and disciplinary penalties, but also, in extreme

cases and provided that the registrant acts with intent, criminal responsibilities.

2.6 Risks To Be Considered

The acquisition of ownership (and other real rights) on real estate, be it through a share or an asset deal, might involve considerable risks associated with either the validity of the transaction itself or the possibility to legally, safely, and effectively proceed to the envisioned use and/or development of the property. For this reason, thorough legal and technical due diligence should be conducted on behalf of the prospective acquirer.

Legal due diligence typically includes the review and confirmation of an uninterrupted sequence of titles (i.e., legal acts capable of producing the transfer of a real right, such as sale and purchase agreements, deeds of acceptance of inheritance, court decisions, etc.) duly registered in the public records, that is, either in the physical or digital records of the competent former Land Registries or in the system of the National Cadastre (see Section 1.2). The titles themselves should be reviewed in terms of their validity, for a minimum 20-year lookback period. This period is essential because it is the time required to acquire a property by adverse possession (extraordinary usucaption), and continues to benefit the consecutive successors of the initial possessor of the property. Furthermore, it is investigated if there are any registered encumbrances or other property defects (e.g., mortgages, prenotations of mortgage, servitudes, long-term leases, lawsuits, seizures) or non-registered leases. In any case, it should be remembered that the factuality of the conclusions reached through a title review is inevitably dependent on the system of publicity that applies in the area of the property (see Section 1.4).

Technical due diligence, performed by engineers, usually focuses on confirming the property's location and dimensions, as well as inspecting existing buildings and structures in order to confirm their compliance with the corresponding building permit(s) and applicable legislation. This last verification is crucial because, as explained in Section 2.5, the transfer of real rights on properties with illegal (or not regularized) buildings thereon is generally impossible.

Finally, legal and technical advisors collaborate in order to review the property's spatial and urban planning status (or "planning identity"), which delineates the ways in which the property can be built on and exploited. Indicatively, it is determined whether the land plot falls inside or outside a city plan, what are the allowed land uses and applicable building terms and restrictions deriving from such status, and whether limitations arise from special legislation on forests and forest expanses, cultural heritage, nature conservation areas, foreshore and beach zones, etc.

If the purchaser wishes to bind their prospective seller in advance (e.g., for a certain sale price) before the completion of the due diligence, it is common practice to conclude a preliminary agreement. Such agreements are also useful for the seller to bind prospective purchasers before they (the seller) gather all necessary contractual documentation (see Section 2.6). In order to be valid, a preliminary agreement should contain all the essential elements of the final sale and purchase agreement, and also be drafted by means of a notarial deed (GCC art. 166). For the remaining part, it might be either unilaterally, or bilaterally binding.

In the event that, after the final transfer is complete, a purchaser finds out that the property is flawed with substantive or legal defects that they were unaware of during the transaction, they hold a set of claims against the seller. This means that if the seller manages to prove that the purchaser had knowledge of these defects, they are exonerated from the purchaser's claims.

More specifically, in the case of substantive defects, i.e., if the property (objectively and subjectively) does not correspond to its description according to the contract, is not suitable for its intended use, etc., the purchaser has the right to a) demand that the defect be rectified (if applicable), b) request that the sale price be reduced, c) rescind the sale and purchase agreement, or d) seek compensation, either exclusively or in addition to the previous rights (GCC arts. 540 et seq.). The first three rights are available regardless of the seller's fault (by way of intent or negligence), whereas compensation generally requires demonstrating such fault. In case of legal defects, i.e., third-party rights that hinder the enjoyment of the purchaser's right, the purchaser may, regardless of the seller's fault: a) require proper performance of the sale and purchase agreement and possibly claim compensation for the delay in proper performance, b) insist on performance on the contract despite the defect and claim compensation for the existence of the defect, c) rescind the sale and purchase agreement, or d) exclusively seek compensation (GCC arts. 515-517).

Please refer to Section 2.1 on share deals to see the ways in which the purchaser may ensure greater protection through the sale and purchase agreement, which applies to asset deals as well.

3 Real Estate Financing

3.1 Key Sources of Financing

Banks represent a primary source of real estate financing in Greece, as debt financing on a commercial scale is reserved for licensed credit institutions. To this end, they provide loans, project finance schemes, or sale and lease-back contracts.

Investment capital can be raised through the stock market, institutional funds, or through the issuance of bond loans. Bond loans, governed by Law 4548/2018, are only available

to Greek Societes Anonymes and have proved a particularly effective instrument, both among companies specialized in real estate investments (REICs) and other corporations. The so-called category of "green bonds," issued for the financing of sustainable real estate projects, appears to be increasingly attractive across all sorts of investors.

Another practice worth mentioning is finance leasing, whereby a regulated financial lessor acquires property from the original owner and enters into a long-term lease with the interested investor, combined with an option to acquire ownership of the property at a pre-agreed residual value (typically nominal or even zero).

In addition to the above, funding is available for real estate investments through various national and European development programs. Indicatively, special state funds from the Greek Recovery and Resilience facility are dedicated to incentivizing and supporting certain types of sustainable "Strategic Investments," i.e., large-scale projects that are deemed particularly important for the national economy and for which a unique framework exists.

3.2 Protection of Creditors

A creditor's primary security when financing real estate projects are, unsurprisingly, mortgages and prenotations of mortgage over the debtor's properties. Other securities include:

- Pledges over the debtor's shares and bank accounts.
- Nominal pledges on debtor's goods in turnover, machinery equipment, etc. in accordance with Law 2844/2000, or floating charges.
- Personal or corporate guarantees granted by the debtor's shareholders or entities affiliated with the debtor.
- The assignment of insurance claims, rental claims, and generally all receivables generated by the property(-ies), as well as any claims arising from material contracts of the debtor (e.g., a management agreement with a hotel operator).
- The assignment or establishment of pledges over claims arising from loans granted to the debtor by its shareholders.

In addition, financing agreements contain covenants, such obligations of the debtor to maintain a certain legal and financial status and inform the creditor about any changes, to comply with applicable laws and regulations, to not dispose of or encumber the real estate property(-ies), to not dispose of receivables, to not proceed to corporate transformations and/or distributions, etc.

4 Real Estate Taxes

4.1 Transfer Taxes

The transfer of real rights on real estate properties is subject to taxation. These transfer taxes are levied once and burden either the transferor or the transferee (usually, a seller or a purchaser) of said rights. They include:

- The Real Estate Transfer Tax (FMA) – Law 1587/1950. This tax is imposed on the purchasers of the real rights at a rate of 3% (subject to minimal increases for the benefit of local authorities) on the higher of the objective price (see Section 4.2) or the price of the property agreed between the parties. Exempt from the FMA are, up to certain amounts, the natural persons who purchase properties that shall serve as their main residence. The FMA must be paid by the purchaser before the execution of the notarial deed for the transfer of the real right.
- The Value Added Tax (VAT) – Law 5144/2024 (New VAT Code).. In place of the FMA, VAT is imposed on the transfer of real rights on new and unoccupied buildings (or parts thereof in the case of a horizontal property) whose building permit has been issued after January 1, 2006, at a rate of 24%. Subject to the tax are all natural and legal persons in the context of their business activities. Any subsequent transfers only incur FMA for the purchaser. It is important to point out that persons subject to VAT may opt for a deferral of their obligation to pay VAT until December 31, 2025, in which case the transferee's obligation to pay FMA applies.
- The Capital Gains Tax on Real Estate (FYA) – art. 41 of Law 4172/2013. Capital gains realized by natural persons upon disposal of their real rights are taxable at a rate of 15%. However, the application of this tax has been continuously deferred since its introduction and is currently deferred until December 31, 2026. If the seller is a natural person acting in the context of their business activities or a legal person, these capital gains are, instead, subject to business income tax (at a rate of 9-44% depending on the tax bracket for the former and 22% for the latter).

4.2 Specific Real Estate Taxes

Not only the transfer, but also the mere ownership (or the holding of other real rights apart from mortgages but also, the possession) of real estate in Greece is subject to taxation. The following taxes are levied on an annual basis on the ownership of real estate properties:

- The Uniform Real Estate Property Tax (ENFIA) – Law 4223/2013. This tax consists of a principal tax, imposed on each real estate property located in Greece and owned by a natural or legal person, and a supplementary tax,

imposed only on legal persons for the aggregate value of the taxpayer's rights on real estate. The principal tax on buildings is calculated by multiplying the surface of the building with a so-called "basic tax," which ranges between 2.00 and 16.20 depending on the price zone where the building is located, and other coefficients regarding the building's oldness, floor, façade, etc. Price zones are determined by means of a decision of the Minister of Finance (latest available is the Ministerial Decision No. 57732/2021, as amended by means of the Ministerial Decision No. 19033/2022) and these prices form the basis of the renowned system of "objective values," which should – albeit frequently have not – converge with the current market values of the properties. Similar rules apply to vacant plots. The supplementary tax is imposed on legal persons and is calculated in general at a rate of 0.55%, although exceptions apply (e.g., for properties which are used for any kind of business activity, it is calculated at a rate of 0.1%)

- The Municipality Duty (TAP) – art. 24 of Law 2130/1993. This tax, also imposed on natural and legal persons alike, is collected through electricity bills in favor of Municipalities. The tax is imposed at a rate ranging between 0.025% and 0.035% on the real estate's objective value and (if applicable) further multiplied by a rate derived from the building's oldness. Until recently, it was provided that in case of transfer of real estate assets, a certificate of full payment of the Municipality Duty (TAP) had to be appended in the relevant deed as a condition of its validity. However, said obligation was abolished, pursuant to art. 33 of Law 5076/2023.
- The Special Real Estate Tax (EFA) – art. 15 et seq. of Law 3091/2002. Only applicable to legal persons, this tax is calculated at 15% of the property's objective value. This extortionate tax was introduced in order to tackle the tax avoidance problem of offshore companies regarding their real estate in Greece since the ultimate beneficiaries of these properties remained secret from Greek authorities. Therefore, among other exceptions, companies with a registered seat in Greece or in another country within the EU or the EEA or a third country (provided that this country is not included in the Greek list of non-cooperative jurisdictions), which (i) have registered shares (or the equivalent in their jurisdiction), (ii) disclose their ultimate beneficial shareholders (individuals), and (iii) such individuals hold a Greek tax identification number, are exempt from paying the EFA.

5 Condominiums

5.1 Legal Framework for Condominiums

A much more conventional example of a divergence from the superficies solo cedit principle than the "surface right" (see Section 1.1), condominiums exist in Greece in the form of horizontal and vertical properties, which are collectively referred to as "divided properties."

Horizontal properties are mainly governed by GCC arts. 1002 and 1117 and Law 3741/1929. Horizontal ownership is the special form of ownership that consists of (a) exclusive ownership of a floor or an apartment in a building and (b) a mandatory co-ownership on the land plot and the building's common areas (roof, yard, stairways, etc.). Vertical properties, in turn, were introduced by Legislative Degree 1024/1971, pursuant to which the aforementioned provisions on horizontal properties also apply, mutatis mutandis, to vertical properties, forming a shared legal framework for both concepts. Vertical ownership is the special form of ownership that consists of (a) exclusive ownership of a building constructed on a land plot with two or more separate buildings and (b) mandatory co-ownership of the land plot and the common facilities thereon. The two types of divided properties may also coexist, if a vertical property is also partitioned into horizontal properties, creating a so-called "composite vertical property."

Apart from their conceptual differences, it should be mentioned that, unlike horizontal properties, the establishment of vertical properties is not allowed in non-urban areas (i.e., on land plots beyond city plans and settlement boundaries). However, certain exceptions apply; one to be considered is Integrated Tourist Resorts (Law 4002/2011).

Divided properties are typically established by means of an agreement between all the co-owners of the whole property, a unilateral act of the sole owner of the property, or an agreement between the owner (or owners) of the whole property and the transferee of the divided property. All these acts must take the form of a notarial deed and be registered in the public records.

5.2 Rights and Duties of Co-Owners

The rights and duties of the owners of divided properties derive from Law 3741/1929, as well as the provisions of the GCC on co-ownership (arts. 1113-1117). It is also typical – albeit not mandatory – that additional rights and obligations are set by virtue of By-laws established through an agreement of all the co-owners, which must take the form of a notarial deed and be publicly registered.

In relation to the part of the property exclusively owned by them, the owners of divided properties enjoy all the powers emerging from the right of ownership. As regards the com-

mon parts of the property, each co-owner holds a right of free use and repair thereof, on condition that the rights of the other co-owners are not harmed and that the ordinary purpose that these parts are destined to serve is not altered.

In terms of duties, each co-owner shall contribute to the common expenses of the whole property depending on the value of their divided property and be obliged to take the necessary measures for the maintenance of the common areas in the event of imminent danger.

5.3 Liability of Co-Owners

An owner of a divided property may breach their obligations under the law or the By-laws (if in place) and thus become liable vis-à-vis the other co-owners. If the breach consists of offending the exclusive ownership of another co-owner, this co-owner is equipped with the actions in rem and the remedies related to possession described in Section 1.4, as well as claims for the compensation of any damages suffered. Similarly, if a co-owner offends the co-ownership of the rest on the common areas of the property (e.g., by arbitrarily occupying a common space), each of the other co-owners may protect their percentage of co-ownership or co-possession by exercising the same claims, and also request compensation for any personal damage. In any case, each of the other co-owners holds a primary right to request that another co-owner conforms to all their obligations under the law (e.g., that they pay their share in the common charges) or the potential By-laws (e.g., that they cease to exercise an activity which is not allowed in the building), and demand compensation if damages occur.

5.4 Rights and Duties of Condominium Associations

Together, all the owners of divided properties on a land plot form a union of persons that is not endowed with a legal personality (GCC art. 107). The two main bodies serving this union are the General Meeting of the Co-owners and the Administrator, whose role is usually elaborated in the By-laws, as the relevant provisions of Law 3741/1929 are frugal.

The General Meeting of the Co-owners decides on matters related to the maintenance, improvement, and use of the common parts of the property. The majorities required for decision-making are fixed in the By-Laws. These majorities, however, may not amend the By-laws (which constitute an agreement between all the co-owners) or unanimous decisions of all the co-owners.

The Administrator is typically elected by a majority at the General Meeting in accordance with the By-laws; in the absence thereof, a consensus of all co-owners is required for their appointment. The Administrator is usually responsible for the execution of the maintenance works in the common areas, the allocation of the common expenses, and the legal representation of the union of the co-owners. Finally, the law does not require the Administrator to also be a co-owner, but the By-laws may.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

Just as for any regular lease, no particular form is required for the validity of a commercial lease; even an oral lease agreement can be binding. The usual practice, however, is for the lease contract to be concluded through signing a private document. In any case, tax legislation requires that the basic information of all real estate property leases (whether be it written or oral) be declared on the Greek electronic system for taxation services, whereby they receive a registration number and a so-called "certain date."

Commercial leases must at least define:

• The amount of the rent, which is usually paid on a monthly basis and adjusted annually (see Section 6.5).

• The commercial or professional activity which the lessee may exercise in the leased premises.

The parties may also agree on an obligation of the lessee to practice said activity.

Other terms standardly found in commercial leases include:

• The duration of the lease.

• The amount of a security deposit or a bank letter of guarantee provided by the lessee.

• Obligations of the lessee to keep the leased premises in good condition and repair any damages thereto, pay any utility charges and common area expenses, maintain a set of insurance policies, etc.

• The exclusive responsibility of the lessee to obtain all applicable permits and approvals to exercise the agreed activity and/or perform any construction or fit-out works.

• The reasons for which each party may terminate the lease.

As one would expect, the contents of a standard commercial lease in Greece today have been shaped, in large, by the two great socio-economic crises of recent years: the financial crisis of 2009 and the COVID-19 pandemic. By virtue of a radical reform of the legislation on commercial leases in 2014 (see Section 6.2), their minimum mandatory term was significantly lowered from 12 to three years. Surrounded by market insecurity and fluctuations, both parties to commercial leases have eagerly grasped the opportunity to conclude shorter contracts and freely re-evaluate their best interests more often. Moreover, following the COVID-19 pandemic, parties tend to negotiate more elaborate force majeure clauses.

The central commercial streets and successful malls have

recovered in the post-covid era, with rents showing significant increase as a result of high demand (source: www.ot.gr, Greek real estate: "Explosion" in commercial venues – Higher yields of malls, 04.05.2023, and www.ered.gr High street retail still the dominant factor of the Greek CRE market, 22.02.2024). Moreover, demand for new office spaces is remarkably high in recent years (source ekathimerini: "Jump in demand for new offices", 20.09.2024).

6.2 Regulation of Leases

Commercial leases are regulated by Presidential Decree 34/1995, supplemented by the general provisions of the GCC on leases (arts. 574 et seq.). Considerable amendments were introduced to said presidential decree by virtue of art. 13 of Law 4242/2014, essentially creating two different regimes for commercial leases concluded before ("old leases") and after ("new leases") its enactment on February 28, 2014. The following information on commercial leases is focused on the current legal framework for "new leases."

Pursuant to art. 45 of Presidential Decree 34/1995, its protective regulations for the rights and interests of both parties are "semi-mandatory," in the sense that a waiver of said rights upon the first conclusion of the lease agreement does not produce legal effects (unless stipulated otherwise in the decree), however, a posterior waiver is possible. This means that the parties can only conclude commercial leases that bind them with the total of "semi-mandatory" rights and obligations of the decree, and each of them can only later decide if they want to be deprived of one or more of these rights (or not). One example of these (drastically decreased by virtue of Law 4242/2014) rights is the right of the lessee, three years into the lease, to concede the use of the leased premises to a company established with a minimum participation of 35% by the lessee. However, the most prominent example regarding new leases refers to their duration under Law 4242/2014: this is mandatorily set at three years, even if agreed for a shorter or indefinite term, and may, of course, be agreed for longer. Commercial leases can only be dissolved during the mandatory three-year period by means of a subsequent agreement bearing a certain date. In this context, if the lessee is acknowledged to still hold a right of termination for convenience under the new regime (see Section 6.4), then a certain date would also be required for a subsequent waiver of this right.

Please bear in mind that there are certain exceptions where the protective provisions of Presidential Decree 34/1995 do not apply, leaving the parties under the provisions of the GCC only. These exceptions include the lease of spaces within the premises of ports, airports, and train stations, within public spaces such as archaeological sites and universities, listed buildings, etc.

6.3 Registration of Leases

As a general rule, no registration is required for a commercial lease, neither as a condition for their validity nor as a prerequisite for the lease to have binding power over future owners of the leased property (however, see Section 6.8). The aforementioned declaration to the tax authorities (see Section 6.1) serves purely taxation purposes.

6.4 Termination of Leases and Renewals

The ill-advised wording of art. 13§2 of Law 4242/2014 had created a major interpretative challenge as to whether a "semi-mandatory" right to terminate a commercial lease for convenience (i.e., without cause) is applicable to new leases. Following contradictory decisions issued by several Courts of Appeals, the Supreme Civil and Criminal Court appears to have resolved the matter. Specifically, in its decisions nos. 1187/2023 and 971/2022, the Supreme Court ruled that new leases are binding for both parties throughout the lease, i.e., for at least three years or even longer, if the parties agreed on a longer term. Neither party is entitled to terminate for convenience during the agreed term. After the expiry of the term and/or leases agreed for an indefinite term, the lease may be terminated for convenience, subject to observing a three-month notice period.

With regard to termination for cause, the reasons granting a right to each party to terminate the lease are usually set down in a relevant clause and are mostly associated with a breach of contractual terms. In any case, the law provides that the lessor may terminate the lease if the lessee makes improper use of the property (GCC art. 594), if they fail to pay rent in time (GCC art. 597), or for a "serious cause," that is, for any occurrence which, combined with all other circumstances, renders the continuation of the lease intolerable. However, unless the parties have explicitly agreed otherwise, it is no longer possible for lessors to invoke reconstruction of the property, owner-occupancy, or the intention to practice their own business in the leased premises as causes for termination. On the other hand, the lessee is mainly equipped with a right to terminate the lease if the leased premises have not been delivered in time, wholly or in part, in a (substantive or legal) condition that renders possible their unobstructed use as agreed (GCC art. 585).

When a commercial lease reaches its natural end upon the completion of the minimum mandatory three-year period or any longer-term agreed, the parties may of course agree to renew it. In the absence of such new agreement, if the lessee continues to use the leased premises and the lessor does not object thereto, it is deemed ex lege that the lease has been renewed under the same terms for a duration which is, now, indefinite (GCC art. 611). An indefinite duration means that any party may, at any time, terminate the lease without cause, with a three-month prior notice, according to the recent judgments

of the Supreme Civil and Criminal Court mentioned above.

6.5 Rent Regulations and Rent Reviews

Presidential Decree 34/1995 explicitly states that the amount of the rent is freely determined by the parties, as is the percentage and frequency of its adjustment. For the case where the parties have not agreed on a rent adjustment clause, the law establishes a system for its adjustment after the second year of the lease, based on either the objective or commercial value of the leased premises and, following that, an annual readjustment based on the shift in Consumer Price Index (CPI) statistics.

However, is it rather extraordinary for a specific rent escalation clause not to be included. It is typically agreed that the rent shall increase annually by a percentage equal to the percentage of change in CPI, often further increased by another percentage (e.g., CPI + 2%). Rent review clauses, whereby the rent is brought in line with the current market value of the leased premises through real estate appraisal, are also allowed, yet not as popular (especially for shorter leases) since they result in additional costs for both parties and a mutual agreement on the new rental price is not guaranteed.

However, the contractual right to freely agree on the rent adjustments was restricted recently due to the runaway inflation in Greece. Specifically, art. 96 para. 1 of Law 5007/2022 provides that the increase rate for the rents of commercial leases cannot exceed 3% for the years 2024 and 2025, even if the parties had agreed differently.

Furthermore, through its arts. 288 and 388, the GCC offers useful tools for the adjustment of rent in the case of a material change of circumstances. Especially art. 388, granting a right to request judicial intervention for the adjustment of a contract whose balance has been disrupted by unforeseen events, has been widely used in the past decade of the financial crisis in Greece.

6.6. Services to be Provided Together with the Lease

There is generally no specific service prescribed by law that the lessor of a commercial lease shall provide to the lessee. Lessors do have a general obligation under GCC arts. 575 and 592 to maintain the leased promises in the condition that is appropriate for the exercise of the agreed commercial activity and repair any damages caused by the regular use of the premises by the lessee; these obligations, however, are usually passed on the lessee through the lease agreement.

Other than the above, the parties may freely agree on any additional service to be provided by the lessor. One such example would be a lessor of a shopping mall undertaking to provide cleaning, security, and marketing services to the lessees running the shops within the mall.

6.7 Fit-Out Works and Their Regulation

As a general rule provided by the GCC (art. 591§2) any investments in the form of fit-out works resulting in the increase of the premises' commercial value shall be repaid by the lessor, but only if the lessor truly or presumably desired such fit-out works to be made and remain for the benefit of the property. For fixtures, instead of their right to repayment, the lessee may choose to remove them from the property. In any case, the lessor is entitled to require that the premises be returned to them in their original state (GCC art. 599), in which case the lessee is obliged to proceed to all necessary removals and perform any necessary works to restore such state.

However, these provisions are often derogated from through special agreements in the lease contracts. It is often agreed that the lessor may choose to keep all improvements and fixtures for the benefit of the property, without a duty to repay the lessee, or alternatively choose to have the premises returned to them in their original state at the lessee's cost. In the case where improvements and fixtures are agreed to remain with the lessor, it is typical that instead of repayment, a lower rent would be agreed upon, either during the fit-out works or throughout the lease.

It should be mentioned that if the improvements and fixtures made by the lessee do remain with the lessor, the latter shall be taxed for these benefits with an income tax (an income "in kind"). Tax legislation stipulates that if the parties have agreed that the benefits shall stay with the lessor, then the annual income in kind shall be calculated by dividing the value of these benefits by the number of years of the lease. Other than that, if the benefits to be kept exceed basic fit-out works and result in the property acquiring features that influence its objective real estate value (e.g., the construction of new, or the expansion of existing buildings), then the owner/lessor shall bear a heavier real estate tax (ENFIA, TAP – see Section 4.2) burden.

6.8 Transfer of Leases and Leased Assets

In contrast to regular leases, commercial leases seem to be "immune" to the risk of potential transfers of the leased properties to new owners without the need to observe the additional formalities set by GCC arts. 614-618 (proof of the lease through a document bearing a certain date, registration of leases exceeding nine years in duration). This is essentially the case law of the Supreme Civil and Criminal Court, based on the argument that these provisions have been explicitly excluded from commercial leases by law. Thus, future owners are automatically (ex lege) bound by existing commercial leases for the remaining time of the lease. However, please note that this case law of the Supreme Court was formed under the old regime, where a minimum mandatory term of 12 years was fixed by law, and it has not been tested for new leases, whose minimum term has been set at three years.

A noteworthy exception exists for the case where the old owner is succeeded by a new one, not by means of a consensual transfer, but as a result of enforcement proceedings initiated on the property of the old owner. The highest bidder in these proceedings becomes the new owner of the property and holds the right to terminate the lease. More specifically, if the property was attached after the conclusion of the lease agreement, the new owner can terminate the lease at any time and the lease is subsequently dissolved within six months (art. 1009 of the Greek Code of Civil Procedure). On the contrary, if the lease agreement is concluded after the attachment of the property, the lease can be terminated within two months as of the date of the conclusion of the property's transfer to the new owner; said termination takes effect after two more months (art. 997 of the Greek Code of Civil Procedure).

As for the lessees, they are entitled to unilaterally transfer their rights and obligations deriving from a commercial lease (i.e., their position as lessees) in the case of severe health issues preventing them from continuing their commercial or professional activities in the leased premises. In the case of the lessee's death, this right may be exercised by their closest relatives (art. 12 of Presidential Decree 34/1995).

Other than the above cases, the transfer of a lease agreement presupposes a mutual agreement of all its old and new subjects.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2025

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1 Real Estate Ownership

1.1 Legal Framework

The right to ownership, along with other property rights, is guaranteed by the Constitution of the Republic of Montenegro. Constitutional protection is highlighted in Article 58, which stipulates that no one can be deprived of or restricted in their right to ownership, except when required by the public interest, with fair compensation. Besides the Constitution, the most important real estate legislation in Montenegro includes:

- Law on Property-Legal Relations (Zakon o svojinsko-pravnim odnosima),
- Law on Contracts and Torts (Zakon o obligacioniom odnosima),
- Law on Spatial Planning and Building Construction (Zakon o planiranju prostora i izgradnji objekata),
- Law on State Survey and Real Estate Cadastre (Zakon o drzavnom premjeru i katastru nepokretnosti), and
- Law on State Property (Zakon o drzavnoj imovini).

Overall, ownership right in Montenegro is recognized as the most extensive form of entitlement to real estate, granting its titleholder the broadest variety of rights (possession, usage, and disposal of the real estate), whilst other property rights, may provide fewer degrees of entitlement (such as easements, right of use and passage).

When it comes to the acquisition of property by foreigners in Montenegro, Montenegrin law makes a difference for movable and immovable property. Therefore, a foreign person or entity can acquire the right of ownership of movable property under the same conditions as a Montenegrin citizen. However, when it comes to acquiring immovables (i.e., real estate), there are certain restrictions for foreign citizens in Montenegro, as foreign persons cannot have ownership rights to:

1. Natural resources;

2. Goods in general use;

3. Agricultural land;

4. Forest and forest land;

5. A cultural monument of exceptional and special importance;

6. Immovable property in the land-border area at a depth of one kilometer as well as islands;

7. Immovable property located in an area which, for the sake of protecting the interests and security of the country, has been declared by law to be an area where a foreign person cannot have ownership rights.

Exceptionally, a foreign natural person can acquire ownership rights on agricultural land, forests, and forest land with an area of up to 5,000 square meters, under the condition that the object of the alienation contract (purchase, sale, gift, exchange, etc.) is a residential building located on that land. A foreign person can also have the right to a long-term lease, concession, BOT, and other private-public partnership arrangements on immovables under the same conditions as a Montenegrin citizen.

It is noteworthy that a foreign natural person can acquire the right of ownership of immovable property in Montenegro via inheritance, no different than a citizen of Montenegro. Additionally, foreign natural and legal persons can transfer the right of ownership to a domestic citizen via legal transaction, as well as to a foreign person who has the right to acquire ownership under Montenegrin law.

Regarding the question of expropriation in Montenegro, it can be labeled as a legal process that occurs in the public interest and involves fair compensation, which can be determined in money or by providing ownership or co-ownership of other appropriate immovable property. A beneficiary of expropriation can be the state itself, a municipality, state funds, and companies that are majority-owned by the state, which, in accordance with the law, performs activities of public interest. The procedure of expropriation of immovables, for which public interest has been determined, is carried out by the competent Real Estate Administration.

Expropriation occurs in the form of full loss of ownership (absolute expropriation) or in the form of retention of ownership rights with the imposition of an easement or lease for a certain period (partial expropriation). According to Article 4a of the Montenegrin Law on Expropriation, the purpose of expropriation is described as building facilities or carrying out works of public interest, communal infrastructure facilities, facilities for the needs of state authorities, authorities of the capital city and the municipality, health, educational, cultural and sports facilities, industrial, energy, water management facilities, traffic facilities with associated infrastructure, electronic communication infrastructure network facilities, as well as research and exploitation of mineral and other natural resources.

1.2 Registration of Ownership

Ownership rights on real estate in Montenegro are registered within the competent regional unit of Real Estate Administration, upon the finalization of the legal transaction or other mode of real estate acquisition. In fact, Montenegrin law prescribes the constitutive effect of registration, therefore it is not only mandatory but the acquirer can only be considered the owner of the real estate upon registration in the cadastre, managed and supervised by the Real Estate Administration, which is decentralized and divided into regional units. Therefore, the handover of real estate based on a purchase and sale

contract has no effect on the transfer of ownership rights, since, according to the law, handover is not a way of acquiring ownership rights in real estate, as it is a case with movable property.

This principle is consistently applied to the acquisition of other property rights based on a legal transaction and a mortgage, as the registration has a constitutive character. It must be borne in mind that when it comes to other means of acquisition (decision of a court or other state authority, acquisitive prescription, construction), registration in the cadastre is not a legal requirement for the acquisition of rights and therefore has a declarative character.

1.3 Publicity of Real Estate Register

Article 9 of the Montenegrin Law on Survey and Real Estate Cadastre proclaims a principle of publicity, meaning that everyone has the right to inspect the data contained in the cadastre (which can be done online, through the website of the Real Estate Administration), the right to be issued a real estate title deed, or a certificate that a certain real estate or right has been registered in the real estate cadastre. Detailed entries and documentation can be provided, upon request, to the parties directly involved (e.g., owner) and third parties who can prove a legitimate legal interest in accessing the files.

Additionally, certain information may be obtained based on a request for free access to information pursuant to the Law on Free Access to Information.

However, it is not uncommon that certain encumbrances and limitations are not properly registered, or are not updated; hence a thorough due diligence analysis should always be conducted before entering a transaction concerning the real estate.

1.4 Protection of Ownership

Another principle embedded in the Montenegrin Law on Survey and Real Estate Cadastre is the principle of trustworthiness, which stipulates that data registered on real estate and its rights are considered accurate; thus no one can suffer harmful consequences in real estate transactions and other relations in which this data is used. Registration decisions, as well as any decision from the Real Estate Administration, are subject to appeals and other legal remedies before competent authorities pursuant to the Law on Administrative Procedure. In these proceedings, the participation of involved parties is mandatory, and they are authorized to give all statements and use legal remedies to protect their interests.

Additionally, when it comes to the protection of ownership, the Law on Property-Legal Relation prescribes multiple types of litigation proceedings to protect ownership, possession, secure unhindered ownership, etc. Although litigation proceedings may be lengthy, once they become final, judgments and decisions are enforceable through a public enforcement executor (or court in some cases), who has the ability to engage the police and other competent authorities for assistance.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

A decision to opt for a share or asset deal shall be made depending on the facts of each case and by a previously made complex analysis encompassing all aspects, especially the nature of the investment, the intended business activity, and, of course, tax reasons.

Both share and asset deals are present in Montenegro, whereas a prior "spin-off" option, representing the formation of an SPV company, is gaining more and more affirmation through recent commercial practice.

2.2 Share Deal

The essence of share deals revolves around acquiring ownership of the company itself, which is the owner of the target real estate.

The seller and buyer are required to conclude a sale and purchase agreement (i.e., share transfer agreement), the subject of which is the sale and purchase of the company's shares. This agreement, in practice, is an all-encompassing legal framework covering multiple areas of parties' interest such as representations and warranties, conditions precedent, pre-closing, closing, guarantees, indemnification clauses, etc. The transfer of shares agreement shall be certified by notaries/courts in order to be eligible for registration in the Central Registry of Commercial Entities (Montenegrin company registry).

It is noteworthy that share deals may be used to avoid the prohibitions and limitations for foreigners to purchase certain types of real estate (See Section 1.1), since in this case, the direct owner of the real estate would be a Montenegrin-based company.

Typical positive sides to share deals include:

- Tax advantages, as they are favorable to the buyer since it is not subject to RETT,
- Continuity, as all licenses, permits, contracts, rights, obligations, and employees remain unchanged.
- Typical negative aspects pertain to:
- Acquiring the target company with its entire history, including its liabilities and claims,
- Depending on the circumstances, the seller may be subject to capital gains tax.

To minimize the risks, usually, if the share deal is chosen as the manner of acquiring real estate, the buyer tends to broaden the

scope of the seller's liabilities by stipulating a variety of guarantees, representations, and warranties. The basis of any good transaction is a due diligence analysis covering legal, corporate, management, financial, IP, and other aspects, which serves both parties in these terms.

As highlighted above, another solution that may efficiently minimize transaction risks of the share deal is through the formation of an SPV company that will be the owner of the target asset. Thus, the transaction would have two steps: a) the first step: forming the SPV by restructuring the company, whereby the target asset shall also be transferred to the SPV, and b) the second step: acquiring the SPV's shares. Considering the phases, the downside of this option is the lengthy procedure.

2.3 Asset Deal

An asset deal refers to the sale and purchase of specific real estate executed through a classic sale and purchase agreement.

The parties are required to conclude the agreement before the competent notary (depending on the location of the real estate), which is then submitted to the Real Estate Administration for registration purposes.

As in any transaction, a thorough due diligence analysis should be conducted, but it should primarily focus on examining the chronology of real estate changes in the cadastre, as well as the on-site inspection of the real estate, with the expert team. It is not unusual that there may be defects in the method of acquisition of ownership by the seller or their predecessor (void contracts, etc.) or that there is an earlier contract on the transfer of a right or a request for the recording of a burden, which has not yet been registered in the cadastre.

Typically, the pros of asset deals are:

- The possibility of picking the target assets,
- Limitation of liability, since the risks of acquiring the entire company and its potential liabilities are excluded.

Typical downsides to the asset deals are:

- All licenses, permits, and contracts related to the target real estate must be transferred to the new owner,
- The buyer is subject to the RETT.

2.4 Disposal Process

As explained above, depending on the type of transaction, a different agreement, and its registration procedure will be conveyed before the authorities: i.e., in the case of a share deal, the registration of acquisition of the company's shares is done by the companies' register, and in the case of an asset deal, the registration of the sale and purchase agreement is done in the cadastre.

The notary and other fees are not significantly burdensome to potential investors.

It should be noted that these types of transactions may trigger the merger control process with the competent authorities, which should be obtained beforehand.

Additionally, depending on the type of transaction, the location of the real estate, and the ownership, obtaining different approvals may also be needed (e.g., the sale of real estate located in National Parks is conditional upon Government's pre-emption rights as provided in the Law on National Parks).

2.5 Registration of Change of Ownership

The registration of change of ownership rights based on sale and purchase agreements is done in accordance with the Law on Property-Legal Relations and the Law on State Survey and Real Estate.

The procedure is initiated by the notary, who by authorization of the parties, submits the agreement to the competent Real Estate Administration for the registration of the new owner.

As stated, the fees are not significantly burdensome and are standard pursuant to the Notarial Fee of Montenegro and state fees related to the Real Estate Administration.

The timeframe for concluding the agreement before the notary is quite short, compared to the procedure of actual registration in the cadastre, which may be quite lengthy due to its limited staff capacity. Usually, the Real Estate Administrations responsible for the central and coastal regions are more affected, considering the large influx of requests.

Once again, the sole signing of the sale and purchase agreement does not constitute ownership under Montenegrin law, since such title must be accompanied by registration in the real estate cadastre as the manner of acquisition.

2.6 Risks To Be Considered

As in any transaction, a comprehensive analysis of all the risks should be done. Several typical risks were outlined above, but some additional aspects specific to each jurisdiction should be taken into account, such as possible limitations in the disposal of real estate, namely pre-emption rights, etc.

Noteworthy pre-emptive rights are found in the Companies' Law of Montenegro, which sets forth that such rights belong to the company's shareholders (if multiple shareholders) unless otherwise agreed in the company's founding act/agreement and articles of association. Additionally, co-owners have pre-emptive rights when it comes to the sale of parts of the real estate owned by other co-owners. Pre-emptive rights concerning real estate may also be established by contracts, but in that case, they should be registered in the cadastre.

Furthermore, we highlight once again that the target real estate should be thoroughly examined (both on-site and legally), as it may contain material and legal deficiencies.

Namely, in the case of contracts with compensation, such as sale and purchase agreements of real estate (note: refers only to asset deals), each party is responsible for material deficiencies in its performance. The party is also responsible for legal deficiencies in performance and is obliged to protect the other party from the rights and claims of third parties that would exclude or narrow its rights.

The seller is responsible for the material defects that existed at the time of the transfer of risk to the buyer, regardless of whether they were aware of this, as well as for those material defects that appear after the transfer of risk to the buyer if they are the result of a cause that existed before that. Insignificant material deficiencies are not taken into account.

In any case, the buyer who timely and properly informed the seller about a defect may require the seller to remove the defect, reduce the price, or declare that they are terminating the contract. Regardless of the chosen option, the buyer is also entitled to compensation for damages.

As for legal deficiencies, the seller is liable if there is a right of a third party on the sold item that excludes, reduces, or limits the buyer's right, and the buyer was not informed about its existence, nor did they agree to take the item burdened with that right.

If the seller does not comply with the buyer's request to remove the legal deficiency, in the case of confiscation of the real estate from the buyer, the contract is terminated according to the law itself, and in case of reduction or limitation of the buyer's right, the buyer may, at his choice, terminate the contract or demand a proportional price reduction. In any case, the buyer has the right to compensation for damages.

3 Real Estate Financing

3.1 Key Sources of Financing

Real estate financing, encompassing its acquisition and development, is most commonly done via bank loans, shareholders' loans, and from investor's own funds. The investment is frequently financed on the basis of joint construction agreements, usually executed by the investor with the funding and the owner of the real estate (i.e., land) who contributes to their real estate. The constructed building will then be divided between the parties proportionally to their contributions to the joint project.

The relevant legal framework includes the Law on Credit Institutions with the accompanying bylaws, the Central Bank's decisions, and the Law on Contracts and Torts.

3.2 Protection of Creditors

Regarding the securement of bank loans, depending on the risk assessment analysis, loan amount, repayment period, etc., the most common security traditionally remains the mortgage over the subject real estate. Furthermore, additional bonds of the borrower and its shareholders or other affiliates are usually requested. Recent trends showcase the bank's flexibility regarding acceptable collaterals, as they now accept pledges over receivables and shares.

It is not unusual for shareholders to secure their loans via mortgage as well since the mortgage provides the priority order of repayment. Otherwise, their loans would be subject to a general procedure, which would require litigation proceedings, obtaining an enforceable judgment, and then initiating the enforcement proceedings before the public enforcement officer.

4 Real Estate Taxes

4.1 Transfer Taxes

The transfer of real estate in Montenegro is subject to real estate transfer tax (RETT). Domestic and foreign legal and natural persons are treated equally regarding their obligation to pay RETT unless otherwise specified by an international agreement.

The transfer of real estate is considered to be any acquisition of ownership rights over real estate in Montenegro. Acquisition of ownership rights over real estate includes purchase and sale, exchange, inheritance, gift, contribution and withdrawal of real estate from a business entity, acquisition of real estate in the process of liquidation or bankruptcy, acquisition of real estate based on a court decision or a decision of another competent authority, as well as other methods of acquiring real estate.

The tax base for the real estate transfer tax is the market value of the real estate at the time of its acquisition in the case of sales/purchases. If the price stated in the documentation for acquiring real estate is lower than the market value or is not specified in the documentation, the local tax authority determines the market value of the real estate based on market prices at the time of the tax liability.

The RETT rates in Montenegro are progressive and for real estate valued:

a) up to EUR 150,000, the rate is 3%;

b) over EUR 150,000.01, the rate is EUR 4,500.00 + 5% on the amount exceeding EUR 150,000.01;

c) over EUR 500,000.01, the rate is EUR 22,000.00 + 6% on the amount exceeding EUR 500,000.01.

The law provides for various RETT exemptions, such as (the

list is not exhaustive):

- State bodies;
- Diplomatic and consular missions of foreign states accredited in Montenegro, under reciprocity conditions, and international organizations exempted from real estate transfer tax by international agreement;
- Individuals acquiring real estate in the process of restitution of confiscated property and in the implementation of agrarian policy measures;
- Montenegrin adult citizens residing in Montenegro who are acquiring a residential building or apartment for the first time to meet housing needs, up to 20 square meters per household member, provided they do not own a residential building or apartment in Montenegro;
- Non-governmental organizations acquiring real estate for the purpose of performing the program activities for which they were established;
- Individuals acquiring real estate in the process of expropriation or other proceedings for the taking of real estate for public interest purposes (construction of residential and commercial buildings, etc.);
- Banks, when ownership rights to real estate are secured by fiduciary or mortgage transfer to the bank as a creditor, and when ownership rights to real estate are acquired in exchange for claims in the process of collecting claims based on approved loans and in the process of debtor bank reorganization in accordance with bankruptcy regulations, provided that the acquired real estate by the banks is sold within three years from the acquisition date;
- Real estate transfer tax is not paid in the case when real estate is contributed to a company as an initial contribution or when increasing the share capital and when real estate is acquired through mergers, acquisitions, and divisions of companies conducted in accordance with the Law on Companies;
- In cases of inheritance, gifts, and other instances of acquiring real estate without compensation.

It is important to mention that the sale of newly constructed properties (but only the transfer to the first buyer) is subject to Value Added Tax (VAT) at a standard rate of 21%, whereas the RETT is not applicable.

Additionally, provisions of relevant double taxation treaties may also be applied.

4.2 Specific Real Estate Taxes

Annual property tax is levied on real estate located within the territory of Montenegro, and the taxpayer is the owner of the real estate registered in the real estate cadastre or other property records (such as business books, registers, notarial records, etc.) as of January 1st of the year for which the tax is determined.

The tax base for property tax is the market value of the real estate, and the criteria for determining the market value of real estate are more precisely defined by the Law on Property Tax. The market value of the property is considered to be its value as of January 1st of the year for which the tax is assessed.

The property tax rate is proportional and ranges from 0.25% to 1.00% of the market value of the property. However, there are exceptions to this rule: (i) for secondary residential properties or apartments, the rate ranges from 0.30% to 1.50%; (ii) for unauthorized structures used to address housing needs, the rate ranges from 0.30% to 1.50%, and for those not used to address housing needs, the rate ranges from 0.30% to 2%; (iii) for undeveloped building land, the rate ranges from 0.30% to 5%.

Tax reliefs applicable in this specific case pertain to property tax on residential buildings or apartments that serve as the taxpayer's residence or permanent place of stay. The relief includes a reduction of 20% for the taxpayer and an additional 10% for each member of the household, up to a maximum of 50% of the property tax liability.

The law also recognizes numerous tax exemptions, which include, for example, real estate owned by the state, real estate owned by the Central Bank of Montenegro, real estate owned by accredited consular and diplomatic missions, and others.

The determination, collection, and control of property tax are under the jurisdiction of municipalities in whose territories the properties are located. Consequently, the tax rate is defined by each municipality, with each municipality adopting its own Decision on Property Tax. In doing so, it uses parameters prescribed by the Law on Property Tax and the Law on Tax Administration.

Generally speaking, understanding the tax implications of real estate transactions in Montenegro is crucial for anyone involved in the real estate market, which is why both buyers and sellers must remain vigilant in this matter.

5 Condominiums

5.1 Legal Framework for Condominiums

Condominium, or Condominium property, is defined in Montenegrin law as the right of ownership of separate parts of a residential or commercial building, which is indisputably connected with certain rights on the common parts of such building, as well as on the land on which that building was built. The law also makes a distinction between what is considered a separate or individual part (e.g., apartments, business premises, separate basements, separate attics, separate garages) of the building and the common or mutual part (e.g., foundations, vertical and horizontal construction, roof, hallways, staircases, elevators).

A natural or legal person can have exclusive ownership, co-ownership, or joint ownership of separate parts of a residential building, while on the common parts of the residential building, which serve the building, all owners have common indivisible ownership. However, on the common parts of the residential building, which serve only some owners but not all, only the owners of those separate parts have common indivisible ownership.

An interesting investment opportunity is reserved for mixed-use and condo hotels, which, as a form of exception, are a certain form of sui generis condominium property, pursuant to provisions of the Law on Tourism and Hospitality. Ownership rights can be obtained only over accommodation units with associated parking spaces (excluding rights over common rooms and complementary facilities of the hotel).

5.2 Rights and Duties of Co-Owners

Regarding the rights and duties of condominium owners in respect of their own individual units, the co-owners are free to use their individual part of the residential building, as well as to perform works on their individual part, in such a manner that they do not affect the individual part of another co-owner or the parts that serve the building as a whole.

Regarding the rights and duties of condominium owners when it comes to the common parts and the residential building as a whole, they are obliged to use the common parts in accordance with their purpose and to the extent that corresponds to the rights of other co-owners. Co-owners can decide on all works in the common areas that aim to improve or facilitate use or increase income. Works that may cause damage to the stability or safety of the residential building, that change its architectural appearance, or that cause certain common parts of the building to be unusable by even one co-owner are prohibited.

Condominium owners are also required to contribute to the expenses associated with maintaining the common parts of the building and the land for regular building use, as well as the costs related to building management. The Assembly of Condominium Owners determines the method of organizing the maintenance of the residential building, whereas the obligation to pay the maintenance is prescribed by law.

5.3 Liability of Co-Owners

Co-owners are liable for any damages, irrespective of fault, that result from failure to comply with regulatory requirements of maintaining their individual parts of the building. The performance of any works, along with its individual and common parts, must be kept in such a manner that ensures its functionality and prevents any potential damage. Therefore, The Assembly of Condominium Owners may also be held accountable for any damages resulting from non-compliance with regulations of maintaining the common parts of the building.

5.4 Rights and Duties of Condominium Associations

Condominium Associations in Montenegro take form in the Assembly of Condominium Owners. Assembly represents one of two governing bodies of residential buildings (along with the Manager) and is formed by owners of individual parts of the building or Condominium Owners. As mentioned before, Assembly is responsible for the maintenance of the common parts of the building, therefore it adopts a building maintenance program and ensures its execution, decides on improving living conditions in the building, ensures the dedicated use of the common parts of the residential building and decides on the manner of use of the land designated for the regular use of the building. On the other hand, the Assembly bears responsibility for damages resulting from neglecting or inadequately carrying out tasks within its jurisdiction.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

Generally speaking, the essential elements of any lease agreement under Montenegrin law are (i) the subject of the lease; (ii) the rent; (iii) the duration of the lease; as well as other important elements which include the obligations of the lessor, the obligations of the lessee, termination of the lease agreement, etc.

It is important to emphasize that the Law on Contracts and Torts relies upon the principles of dispositive implementation of law provisions, which means that only in the absence of specific contractual provisions will the provisions of the law apply. However, the parties are not free to deviate from the imperative provisions of the law.

Speaking about the category of commercial leases, Montenegrin law recognizes lease agreements for commercial premises. In this case, a written form as mandatory for this contract is prescribed, i.e., the contract must be certified by the competent

authority (notary); otherwise, it is considered null and void (note: example of an imperative law provision).

In practice, commercial leases typically include, but are not limited to, provisions regulating issues such as (i) repairs to the commercial premises; (ii) the amount of rent during repairs; (iii) special rights of the tenant during repairs; (iv) significant alterations to the commercial premises and the necessity of the lessor's consent for such alterations; (v) compensation for the costs of common facilities; (vi) maintenance costs; (vii) the possibility of subletting the commercial premises and the conditions for subletting; (viii) installed equipment; (ix) notice period and notification of termination.

Recent trends in Montenegro's commercial lease market include a growing emphasis on automatic renewal clauses, where leases may be extended unless a party provides notice to terminate. Additionally, there is an increasing focus on compliance with formal registration requirements, ensuring leases are properly notarized and recorded to secure legal standing and enforceability.

6.2 Regulation of Leases

The Law on Contracts and Torts distinguishes between different types of lease agreements, by prescribing basic provisions for lease agreements and consequently regulating specific lease agreements such as residential and commercial lease agreements.

It is noteworthy to mention that specific regulations may apply to real estate owned by the state of Montenegro. In such cases, additional formalities and conditions may be required (e.g., organizing public tenders).

Although the parties have the autonomy of will, as previously mentioned, there are rules that cannot be circumvented. It is important to note that every contract, including this one, must be made in accordance with mandatory legal provisions and the fundamental principle of conscientiousness and fairness.

6.3 Registration of Leases

Although it is not mandatory to register the commercial lease, it certainly is a good option to record it before the competent Real Estate Administration to ensure the necessary visibility and security.

The registration of the lease agreement is recorded in the real estate cadastre in the "G" section, which relates to encumbrances and restrictions. There is also the possibility of registering a pre-entry of the lease right if it is proven by a document and if the right and the will of the parties to register this right are indisputable.

The current legislation does not provide for any register or database of concluded lease agreements, but there are public requests calling for the organizing of such a register.

6.4 Termination of Leases and Renewals

A commercial lease can be concluded for a fixed term or for an indefinite period. The more common practice is to conclude a lease for a fixed term, with the parties agreeing that the lease will be automatically renewed unless either party notifies the other of their intention not to renew the lease.

A commercial lease agreement concluded for an indefinite term cannot terminate based on a unilateral notice before the expiration of six months from the conclusion unless the contract stipulates otherwise (i.e., the autonomy of the parties applies here). A commercial lease agreement concluded for an indefinite term terminates on the expiration of the notice period specified in the contract, which is typically three months unless otherwise agreed. Additionally, unless the contract specifies otherwise, the notice can only be given on the first or fifteenth day of the month.

The law provides the possibility of terminating the lease at any time by the lessor, regardless of contractual or legal provisions regarding the duration of the lease, in the following cases: (i) the tenant, even after written notice from the lessor, continues to use the commercial premise contrary to the lease or causes significant damage by using it without due care; (ii) the tenant fails to pay the overdue rent within fifteen days of receiving written notice from the lessor; (iii) the lessor, due to reasons beyond his responsibility, cannot use the commercial premise where they were conducting their business and intends to use the premise leased to the tenant. The tenant has the same right in the following cases: (i) if the lessor does not provide the commercial premises to the condition they are obligated to deliver or maintain within a reasonable period allowed by the lessee.

In this context, we can also discuss the tacit renewal of the lease, which occurs when a lease agreement is concluded for a fixed term, and upon its expiration, the lessee continues to use the commercial premises. For tacit renewal to take place, it is necessary that the lessor does not oppose the continuation of the tenant's use of the space. In such cases, it is considered that a new lease agreement has been concluded for an indefinite term under the same conditions as the previous one.

6.5 Rent Regulations and Rent Reviews

The Montenegrin legal system does not regulate or restrict the amounts of rent, which means that the rents rely on market principles. However, general principles of contracting as stipulated in the Law on Contracts and Torts shall nevertheless be adhered to, e.g., the equivalency of mutual obligations, conscientiousness and honesty, good businessman standards, etc.

There are certain cases where restrictions apply, namely the

Law on Social Housing prescribes that the rent amount depends on the income of the tenant's family household, the size of the residential building, and the amount of maintenance costs of the residential building and common parts of the residential building.

6.6 Services To Be Provided Together With the Lease

The relevant provisions of the Law on Contracts and Torts prescribe that the lessor is obliged to hand over the leased premises to the tenant in good condition. If the leased premise is in a condition described in the contract, it is considered to be in good condition, and in the absence of a contract, a good condition is the one where the leased premise can be used for the purpose for which the contract was concluded.

The lessor is obliged to keep the leased premises in good condition for the duration of the lease and, for that purpose, to perform the necessary repairs. Anyhow, the lessor is obliged to compensate the tenant for the costs incurred by the tenant for maintenance which the lessor would have been obliged to do. However, the costs of minor repairs caused by regular use, as well as the costs of use itself, are borne by the tenant.

6.7 Fit-Out Works and Their Regulation

It is quite common in commercial practice that the leased premises are premises needing fit-out works, whereas, for the leasing of housing premises, it is less common.

The relevant provisions of the Law on Contracts and Torts prescribe that if the tenant made any changes to the property during the lease, he is obliged to return it to the condition it was in when it was leased to him.

The tenant can take away the additions he made to the property if the additions can be separated without damaging them, but the lessor can keep them if he compensates the tenant for their value at the time of return.

However, it is important to note that the parties are free to deviate from the law provisions in contractual relations (apart from the imperative provisions), which they usually do in these cases, e.g., the rent amount includes the costs of fit-out works, or they specifically agree on the handover protocol dividing what belongs to whom upon the expiration/termination of the lease.

6.8 Transfer of Leases and Leased Assets

A lease agreement may be transferred by an assignment agreement concluded between the parties who are the parties to the lease agreement and the party receiving the rights and obligations from it. In the case of assignment, either party may assign its rights and obligations under the lease agreement, but it is conditional on the acceptance of the other party. The rights and obligations remain unchanged unless agreed otherwise.

When the leased property is transferred to another person, the transferee takes the place of the lessor and assumes his obligations towards the tenant if he knew of the existence of the lease agreement at the time of concluding the agreement for such transfer.

The transferee who did not know about the existence of the lease agreement at the time of concluding the agreement for transfer is not obliged to hand over the leased property to the tenant. In that case, the tenant may only claim damages from the lessor. The transferor (the original lessor) is anyhow responsible for the transferee's obligations from the lease agreement as a joint guarantor to the tenant.

Additionally, in the case of transferring the leased property to another person, the tenant has the legal right to unilaterally terminate the lease agreement.

Considering these cases, for security reasons, it may be advisable to register the lease agreement in the real estate cadastre, since Montenegrin law provides for this option. In this case, it is considered that the transferee knew about the existence of the lease agreement, due to the publicly available information on the existence of the agreement.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

The Law on Spatial Planning and Construction of Buildings is an umbrella act regulating the planning and zoning of real estate in Montenegro. It prescribes that there will be only two spatial planning documents for the territory of Montenegro: the Spatial Plan of Montenegro and the General Regulation Plan based on which all other planning documents will be adopted.

The currently applied Spatial Plan of Montenegro was adopted in 2008 and it was meant to be valid until 2020 but considering that the new Spatial Plan has not yet been adopted (note: currently, its adoption is expected in the upcoming period), it remains in force. The new Spatial Plan should be valid for 20 years after its adoption.

The General Regulation Plan of Montenegro, specifying the goals and measures of the spatial and urban development of Montenegro in more detail, once adopted, will be valid for 10 years upon its adoption.

Until the adoption of the General Regulation Plan of Montenegro, a large number of previously adopted and currently applicable planning documents (both on a local and state level) will remain in force. All planning documents are available on an online public register held by the relevant Ministry.

When it comes to investing, it is advisable to assemble a coher-

ent technical and legal team with a good understanding of the particularities of Montenegrin planning regulations. Adding to that calculation the specifics of the coastal area regime, UNESCO protection of certain areas, five National Parks in Montenegro, the requirements for preservation of nature, sustainable development, and assessment of impact to the environment, the more argument to do so.

As for the construction process itself, under currently applicable provisions of Law on Spatial Planning and Building Construction it is not required to obtain a construction permit but rather to submit the construction report. However, the Parliament of Montenegro is expected to adopt new legislation in this matter by the end of February 2025, i.e. Law on the construction of buildings and Law on spatial planning.

The proposed new laws are re-introducing construction permit to be issued either by local authorities or the relevant Ministry, depending on their division of competence.

The vast majority of the procedure remains the same. Namely, in order to construct, the investor is required to prepare a concept design ("idejno rjesenje") based on Urban and Technical Conditions extracted from the applicable planning document. The second step is obtaining the approval of the Main State or City Architect (their competence is divided depending on the type of building and its area) for the concept design. The next phase is preparing the main project ("glavni projekat"), which is a detailed elaboration of the concept design, encompassing at least an architectural project, construction project, electrotechnical project, and mechanical project. The main project is subject to certification and revision, which includes checking the compliance of the main project with urban and technical conditions, the law, special regulations, and rules of the profession, etc.

Upon finishing the construction, under current laws, no usage permit is issued (note: except for complex engineering buildings); however, according to proposed law changes, it is also re-introduced into Montenegrin legal system.

It remains to be seen what the final text of the enacted laws in this particular area will be, and more importantly, what impact the new legal provisions will have in practice.

7.2 Can a Planning/Zoning Decision Be Appealed?

The planning documents cannot be appealed, considering they are a public document adopted in an official law procedure and their validity is erga omnes. However, they may be the subject of constitutional reviews.

As for the previously mentioned procedures referring to obtaining the necessary documents in order to construct buildings, they are governed by the Administrative Law and the Law on Administrative Dispute. The applicant has the right to appeal all the decisions to the second-instance bodies, and even to file a lawsuit against the decision made by the second-instance bodies.

The Administrative Court of Montenegro has the jurisdiction to hear these cases, but it is worth noting that the big downside is the lengthiness of these proceedings (e.g., around two years). Additionally, extraordinary legal remedies are also available against the judgment, as well as the constitutional appeal.

Please note that this article is intended for informational purposes and provides only a general overview. Specific details of each potential case should be individually assessed and considered.

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2025

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1 Real Estate Ownership

1.1 Legal Framework

One of the fundamental values of the constitutional order of the Republic of North Macedonia guaranteed by the Constitution of the Republic of North Macedonia is the legal protection of property. As Lex specialis law for regulating the right of ownership over real estate (RE) is the Law on Ownership and Other Real Estate Rights (Official Gazette of the Republic of Macedonia, No.18/2001 and its subsequent amendments). Additional legal framework for regulating the right of ownership over real estate is in the following laws: Law on Construction Land (Official Gazette of the Republic of Macedonia, No.15/2015 and its subsequent amendments); Law on International Private Law (Official Gazette of the Republic of Macedonia, No.87/2007 and its subsequent amendments); Law on Real Estate Cadastre (Official Gazette of the Republic of Macedonia, No.55/2013); Law on the sale of state-owned agricultural land (Official Gazette of the Republic of Macedonia, No.87/2013 and its subsequent amendments); Expropriation law (Official Gazette of the Republic of Macedonia, No.95/2012 and its subsequent amendments); and Law on Obligations (Official Gazette of the Republic of Macedonia, No.18/2001 and its subsequent amendments).

In the Republic of North Macedonia, the right of ownership over RE can be acquired by all domestic and foreign natural and legal persons, including the state and local self-government units, under the conditions and in the manner provided in the Law on ownership and other real rights. When the RE is the subject of the right of ownership of several persons, this right arises as:

(i) Co-ownership (Co-ownership shall mean ownership by multiple persons who have the right to ownership of an undivided item for which the part of each of them is determined proportionally in accordance to the whole (ideal, co-ownership part)), (ii) Joint ownership (Joint ownership is the ownership by several persons of an undivided thing when their parts are determinable but not predetermined.) and (iii) Floor ownership (Apartments, business facilities, cellars, garages and other separate parts of housing and business building which have two or more apartments, or business facilities and other separate parts can be owned by different natural persons and legal entities).

The right to servitude, the right to pledge, the right to a real burden, and other real rights are limited real rights and may be based on RE to which there is a right of ownership.

Foreign natural persons and legal entities, residents of the member states of the European Union and OECD may acquire the right of ownership of an apartment and premises in the territory of the Republic of North Macedonia in the same manner as the citizens of the Republic of North Macedonia.

Foreign natural persons and legal entities, residents of the non-member states of the European Union and OECD may acquire the right of ownership of an apartment and premises in the territory of the Republic of North Macedonia in the same manner as the citizens of the Republic of North Macedonia, under the same conditions of reciprocity.

For land ownership, the law stipulates that foreign natural persons and legal entities, residents of the member states of the European Union and OECD may acquire the right of ownership and the right to a long-term lease of construction land in the territory of the Republic of North Macedonia in the same manner as domestic legal entities and natural persons, citizens of the Republic of North Macedonia.

Foreign natural persons and legal entities, residents of non-member states of the European Union and OECD may acquire the right of ownership and the right to a long-term lease of construction land in the territory of the Republic of North Macedonia under the conditions of reciprocity.

According to the law, foreign natural persons and legal entities cannot acquire the right of ownership of agricultural land in the territory of the Republic of North Macedonia. However, foreign natural persons and legal entities may, under the conditions of reciprocity, acquire the right to a long-term lease of agricultural land in the territory of the Republic of North Macedonia, based on the consent of the minister of justice, upon previously acquired opinion of the minister of agriculture, forestry, and water resource management, and the minister of finance.

The rules for the expropriation of ownership are provided in the Expropriation law, which determines the confiscation and limitation of the right of ownership and the property rights of real estate for the purpose of realization of public interest in the construction of facilities and the performance of works of importance for the Republic of Macedonia and the construction of facilities and the performance of works of local importance.

The RE market trends in North Macedonia are the construction of residential complexes, business premises, and malls, for the purpose of sale and leasing.

1.2 Registration of Ownership

In the public book kept by the Agency of Real Estate Cadaster of the Republic of North Macedonia are registered the right of ownership of the RE and other real rights of the real estate, the real estate data, owners' data, owner's other rights as well as of other relevant rights and facts whose registration is determined by law.

1.3 Publicity of Real Estate Register

The part of entries in the registry related to the property itself and the owner of the RE property are publicly available on the website of the Real Estate Cadaster Agency. For more detailed information regarding the RE, it is necessary to get a property list, which can be issued by a cadaster or a notary. This service is chargeable and such a list can be obtained by any third party. Information from the website is of informative character on ownership rights because the only valid proof of real estate ownership and other real rights is a property list issued by a cadastre or a competent notary.

The registry of RE has a registry in the Central Registry of North Macedonia, where this registry issues information of informative character on ownership rights, data on land parcels and objects on such parcels, as well as information on liens. However, in accordance with the Law on Personal Data Protection, property lists will not contain the owner's unique personal identification number (UPIN) when issued to a third person.

1.4 Protection of Ownership

Property entries are binding. No person may be deprived or restricted of ownership and the rights deriving from it, except in the cases of public interest determined by law, and the owner has the right of judicial protection. The normative regulation of property lawsuits in the legal system of the Republic of North Macedonia is contained in several laws. Lawsuits for the protection of property according to the Law on Ownership and Other Real Rights are the following: ownership lawsuit for return the possession of the RE (rei vindication), a lawsuit by a presumed owner (actio publiciana), a lawsuit against disturbance of ownership (actio negatoria), a lawsuit for protection of co-ownership, i.e., joint ownership, a declaratory lawsuit, and an extraction lawsuit. Lawsuits for protection of the RE right are lawsuits for change, i.e., for the deletion of entries in the Cadaster.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

RE can be acquired either directly as an asset deal between the seller and buyer or by acquiring the shares of the legal entity that is the owner of the RE. The main difference between a share deal and an asset deal is that, within asset deal, there is an obligation to pay a property transfer tax.

2.2 Share Deal

The manner of acquisition of RE depends on the evaluation of the risks by the acquirer of the RE having in mind that the acquisition of the shares means the acquisition of the owner company with all its liabilities toward any third party. The costs for the acquisition of the RE with an asset deal are slightly higher compared to a share deal. Also, the acquisition of the RE as an asset deal will be subject to property transfer tax (from 2% to 4% of the value of the RE) and such tax is not applicable to a share deal. Usually, the procedure of acquisition of RE is subject to a prior due diligence process which should address all relevant risks and determine the appropriate way for acquisition of the RE.

2.3 Asset Deal

An asset deal is the purchase of a target's underlying assets. The transaction involves transferring the ownership of assets from the seller to the purchaser. The purchaser only acquires the assets along with any liens. The ability to choose specific assets provides the purchaser with flexibility. The purchaser does not spend money on unwanted assets and there is less risk of the purchaser assuming unknown or undisclosed liabilities. However, this also makes asset acquisitions more complex because the purchaser has to spend time identifying the assets and liabilities it wishes to acquire and assume.

2.4 Disposal Process

A purchase agreement obliges the seller to hand over the item it sells to the purchaser so that the purchaser acquires ownership, and the purchaser undertakes to pay the seller the agreed price. A purchase agreement of real estate must be concluded in writing form. The signatures of the contracting parties in the contract for sale and purchase of real estate are notarized or the contract is solemnized by the notary public. The costs for notarization and solemnization depend on the value of the RE and the notary determines them in accordance with the appropriate notary tariff. There are no special approvals for the transfer of ownership, except in the case the RE is land that the seller acquired from the state in which case the seller needs to obtain prior approval from the State Attorney and to transfer all its obligations from the agreement with the state to the purchaser.

2.5 Registration of Change of Ownership

When the parties conclude a purchase agreement, they are obligated to submit it to the relevant municipality for clearance of the property transfer tax. Once the property transfer tax is paid. The purchase agreement is notarized by a notary public and the notary submits the application for registration of the change in the real estate cadaster after which the purchased will be registered as the owner of the RE and the transaction will be considered as closed. When the value of the real estate is greater than EUR 10,000, the purchase agreement must be drawn up by a lawyer and contain a seal and signature by a lawyer.

2.6 Risks To Be Considered

In the case of the sale of a co-ownership part, the other co-owners shall have the pre-emptive right to purchase. The co-owner who intends to sell their co-ownership part shall be obliged, by means of a written proposal through a notary, to offer for sale its part to the other co-owners and to announce the price and the terms of sale. If the co-owners of the RE who are offered the co-ownership part do not declare that they accept the offer within 30 days of the announcement in the written proposal, the co-owner may sell their co-ownership part to another person. If several co-owners want to buy the ideal part of the thing under the same conditions, then it shall be given to the owner determined by the seller. In the case the co-owner who sells their co-ownership part does not submit an offer to all the co-owners, the co-owners who have not been given the offer may request the sale to be annulled in a court procedure. In the case the RE is agricultural land, the neighbors of the land also have a pre-emptive right to purchase the land. Also, any sale and purchase agreement of RE that the seller acquired in marriage should be subject to consent from the seller's spouse.

3 Real Estate Financing

3.1 Key Sources of Financing

3.1.1 Debt Financing

3.1.1.1 Bank Loans: This is the most common method for financing real estate purchases. Banks and financial institutions provide loans to natural persons and legal entities. The terms, interest rates, and eligibility criteria vary based on the lender and the borrower's financial situation. When approving the loan, banks do a detailed credit analysis of the client, where it should be emphasized that the most important factor for approving a loan is the client's credit ability to repay the loan through the income earned from his regular work (regular income). Banks provide loans based on a loan approval agreement concluded between the bank and the borrower. With that agreement, the bank and the borrower arrange the conditions under which the borrower will return the loan, the duration of the loan, the interest rate that will be calculated to the borrower, the security that the borrower will give to the bank for the given credit, as well as other rights and obligations arising for the contracting parties. The interest rate for loans is determined by the bank and it can be a fixed interest rate or a variable interest rate, the interest rate for housing loans should be within the limits determined by the National Bank of the Republic of North Macedonia.

There are different conditions from the bank for the natural persons and the legal entities and every bank has its own conditions, there is no legal obligation for all the banks to have the same loan conditions, but they must be within the framework of fair competition and the conditions that are provided by the law.

Bank loans for legal entities are loans that in the Republic of North Macedonia are also known as investment loans, namely, unlike loans for natural persons where there are specific housing loans, for legal entities these loans belong to the category of investment loans because they are considered an investment of the legal entity, regardless of whether it builds, upgrades, buys or sells real estate.

3.1.1.2 Private Financing: Investors or private lenders may offer financing options for real estate purchases, especially for commercial properties or large developments. Terms and conditions for private financing can vary widely and may involve higher interest rates or different repayment terms.

3.1.2 Financing Through Own Funds

Many individuals use their personal savings or investments to finance real estate purchases. This could include savings accounts, fixed deposits, stocks, or other liquid assets that can be used as a down payment or to cover the entire purchase price.

The financing real estate methods are regulated by different laws in North Macedonia:

- Law on Obligations
- Banking Law
- Bylaws from the Banking Law
- Law of Agreed Pledge

3.2 Protection of Creditors

Real estate financing is always a secure claim of financiers. Securing claims is regulated in the legislation of the Republic of North Macedonia. The main types of security used in RE financing are the following:

3.2.1 Mortgage: One of the primary protections for creditors is the ability to register a mortgage on the real estate property being financed or other property of the creditor-beneficiary. The Law of Agreed Pledges governs the creation and registration of mortgages, which serve as a security interest in the property. In case the borrower defaults on the loan, the creditor (mortgagee) can initiate an enforcement procedure to recover the outstanding debt by selling the property.

The right to a mortgage is acquired by concluding the mortgage agreement and by recording the mortgage in a public book in the manner and under the conditions prescribed by law. By public book, is meant the book in which the right of ownership over real estate and other real rights over that real estate is recorded, as well as the book in which the right of ownership and other real rights over things are recorded equated with real estate.

The mortgage is regulated by the Law of Agreed Pledges.

3.2.2 Pledge of Movable Assets: As a security for financing real estates in North Macedonia is also acceptable to establish a pledge of movable assets' property of a creditor. This way of securing is usually acceptable for the bank if the creditor is a legal entity. The pledge of movable assets should be registered in the Pledge Register at the Central Register of the Republic of North Macedonia.

The pledge creditor and the pledge debtor of the pledge agreement can give it the status of an enforceable document before or after the registration of the pledge in the Pledge Register.

A pledge agreement has the status of an enforceable document if it is certified or drawn up by a notary and if it contains a statement from the contracting parties that they agree that their pledge agreement has the status of an enforceable document. The pledge of movable property is regulated by the Law of Agreed Pledges.

3.2.3 Bill of Exchange: A bill of exchange is a negotiable instrument that functions as a written order by one party (the drawer) to another (the drawee) to pay a specified amount to a third party (the payee). In the context of real estate transactions, it can be used as an additional form of security for the lender (usually a bank) providing a mortgage loan. When a borrower (mortgagor) pledges real estate as collateral to obtain a mortgage loan, the lender may also require additional security to mitigate risks. A bill of exchange can serve this purpose by providing a secondary means of repayment if the borrower defaults on the mortgage. In the event of default by the borrower, the lender can enforce the bill of exchange to recover the outstanding debt. This may involve presenting the bill of exchange to the drawee (often the borrower or a guarantor) for payment according to its terms. The bill of exchange is regulated by the law of bill of exchange.

3.2.4 Bank Guarantee: A bank guarantee is a commitment issued by a bank on behalf of a customer (the applicant) to a beneficiary (the recipient of the guarantee) that payment or performance obligations will be met if the applicant fails to fulfill them. It assures the beneficiary that they will receive compensation up to a specified amount under the terms of the guarantee. In North Macedonia, bank guarantees can be used in real estate transactions as a form of security or assurance. For example, where a buyer may provide a bank guarantee to the seller as security for a down payment.

To obtain a bank guarantee, the applicant (often with the assistance of legal or financial advisors) submits a request to their bank, which assesses their creditworthiness and issues the guarantee if approved. The bank charges a fee or commission for issuing the guarantee, typically based on the guarantee amount and risk assessment.

If the applicant fails to fulfill their obligations under the guarantee, the beneficiary can present the guarantee to the bank for payment. The bank then pays the beneficiary up to the guaranteed amount and may seek reimbursement from the applicant.

Bank guarantees are regulated by the Law on Obligations and the Banking Law.

3.2.5 Guarantee: In North Macedonia, an agreement for guarantee can also be concluded as a security of financing real estate. With an agreement for guarantee, the guarantor commits to the creditor that he will fulfill the valid and due obligation of the debtor if the debtor does not do so. The guaranteed agreement binds the guarantor only if they made a guaranteed statement in writing. Only a person who has full business capacity can be bound by a contract of guarantee.

A guarantee can be given for any valid obligation, regardless of its content. It can be guaranteed for a contingent obligation as well as for a certain future obligation. A guarantee for a future obligation can be revoked before the obligation arises if the term in which it should arise is not foreseen.

The obligation of the guarantor cannot be greater than the obligation of the main debtor, and if it is agreed to be greater, it is reduced to the extent of the debtor's obligation. The guarantor is responsible for the fulfillment of the entire obligation for which they have guaranteed if their liability is not limited to any part of it or is otherwise subject to lighter conditions.

The guarantor is obliged to compensate the necessary costs incurred by the creditor in order to collect the debt from the principal debtor. The guarantor is also responsible for any increase in the obligation that would occur due to the debtor's delay or due to the debtor's fault unless otherwise agreed. The guarantor is only liable for the agreed interest that has accrued after the conclusion of the guarantee agreement.

The guarantee is regulated by the Law on Obligations.

4 Real Estate Taxes

4.1 Transfer Taxes

4.1.1 Real Estate Transfer Tax: Real estate turnover tax is paid on real estate sales. The sale of real estate includes the transfer with or without compensation of the right to ownership, as well as another way of acquiring real estate with or without compensation between legal entities and individuals.

The person liable for the real estate sales tax is a legal and natural person – the seller of the real estate. As an exception according to the Law on Property Taxes, the oblige of the real estate turnover tax can be a legal entity and a natural person – the buyer of the real estate, if in the contract for the purchase and sale of the real estate, it is agreed that the tax will be paid by the buyer.

The basis of the real estate sales tax is the market value of the real estate at the time of the liability. Real estate sales tax rates are proportional and range from 2% to 4%.

The amount of real estate sales tax rates is determined by the decision of the council of the municipality where the real estate is located. The amount of real estate sales tax rates is determined by the decision of the council of municipalities in the city of Skopje and the Council of the city of Skopje in accordance with the Law on the City of Skopje, for real estate located in the territory of the City of Skopje.

The tax liability of the real estate turnover tax occurs on the day of the conclusion of the contract for the transfer of the right of ownership of the real estate, that is, of the replacement of the real estate.

Real estate turnover tax is not paid:

1) on the sale of real estate in the expropriation procedure;

2) when a foreign diplomatic or consular representation transfers the right of ownership of real estate, under the condition of reciprocity;

3) when the right of ownership is transferred for the purpose of settling obligations based on public revenues in the procedure for forced collection;

4) on the sale of real estate between state authorities, between state authorities and municipalities, and between municipalities;

5) the sale of real estate in the confiscation procedure;

6) on the sale of socially owned apartments, if the purchase agreement does not specify who is responsible for paying the tax;

7) when the right of ownership of real estate is transferred to state authorities for the purpose of collection of claims in bankruptcy and executive proceedings;

8) when the right of ownership of real estate is transferred to the provider of life support who, in relation to the recipient of the support, is in the first line of succession, and only for the part of the real estate that he would inherit according to the Law on Inheritance and without giving the support;

9) on the first turnover of residential buildings and apartments that will be carried out within a period of up to five years after construction, on which value-added tax has been calculated;

10) when investing real estate in the capital of trading companies;

11) of securities trading, in terms of the Law on Securities and

12) when the right of ownership of real estate is transferred to the banks as creditors, for the purpose of collecting a monetary claim, if they sell the acquired property within three years.

4.1.2 Value-Added Tax: The subject of taxation with value-added tax is the turnover of goods and services, which is carried out with compensation in the country by the taxpayer within the framework of his economic activity. Turnover of goods in the sense of the Law on Added Value represents the transfer of the right to dispose of movable or immovable property. The tax rate for measuring real estate according to the Law on Added Value in the Republic of North Macedonia is 18% for taxable turnover. VAT only applies to new residential properties or commercial properties sold by VAT-registered entities for the first sale of the property.

4.2 Specific Real Estate Taxes

Property tax: Property tax should be paid for immovable property, except for that property which is exempt from payment of tax according to the Law on Tax of Property. A property tax obligor is a legal entity and natural person who owns the property. If the property is owned by several persons, each of them is liable for the property tax in proportion to the ownership share.

The basis of the property tax is the market value of real estate. The determination of the market value of immovable property is performed by an appraiser who is employed in the local self-government unit, and at the request of the local self-government unit, it can also be performed by a person who is an authorized appraiser. The market value is determined according to the Methodology for assessing the market value of real estate.

The property tax rates for real estate are proportional and amount from 0.10% to 0.20% of the market property value. Property tax rates can be determined according to the type of property.

The tax liability for the property tax arises from the date of acquisition of the property, the issuance of approval for the use of the real estate by a competent authority, or from the day of commencement of the use of the property by the taxpayer.

The property taxpayer for a single or multi-apartment housing facility and yard (land) in which he lives has the right to a reduction of the calculated tax in the amount of 50%.

Property tax is not payable on:

1) state-owned immovable property used by state authorities, municipally owned immovable property used by municipal authorities, municipal authorities in the city of Skopje, and the authorities of the city of Skopje, except for immovable property used by physical or legal entities persons;

2) real estate of foreign diplomatic and consular missions and of missions of international organizations, if they are owned by them, under the condition of reciprocity;

3) immovable property owned by the National Bank of the Republic of North Macedonia;

4) religious facilities in which worship, prayer, and other manifestations of faith are performed, such as a temple, mosque, prayer house, synagogue, cemetery, and other premises of a church, religious community, and religious group;

5) individual buildings that have been declared cultural heritage by a protection act;

6) facilities for the protection of land, water, and air;

7) the facilities of enterprises for work training, professional rehabilitation, and employment of the disabled;

8) land used for surface and underground mining and geological research;

9) facilities intended for the primary processing of agricultural products, namely:

- facilities intended for breeding livestock and fish,
- facilities for housing equipment for monitoring the quality and safety of the primary livestock and agricultural products of an agricultural economy,
- facilities for accommodation and maintenance of agricultural machinery, auxiliary equipment, and other means of transport and equipment of an agricultural economy,
- facilities for storage, reception, storage, and packaging of primary agricultural and livestock products and feed for animals on an agricultural farm,
- facilities, collection centers for milk, mushrooms, and medicinal plants,
- water reservoirs related to activities in agricultural production of an agricultural economy and
- facilities for the treatment of waste from activities in agricultural production of an agricultural economy.

10) agricultural land used for agricultural production.

5 Condominiums

5.1 Legal Framework for Condominiums

The legal framework that regulates condominiums in our jurisdiction consists of the Law on ownership and other property rights and the Law on housing.

The Law on ownership and other property rights defines the condominium as the right of ownership over the separate parts of buildings.

Apartments, business premises, cellars, garages, and other special parts of residential and office buildings that have two or more apartments, i.e., business premises and other separate parts may be owned by different natural or legal persons (condominium).

There can be co-ownership over ideal parts of separate apartments and other separate parts of a building.

The parts of an apartment building that are in the function of the building as a whole or some of its parts are used as joint and indivisible ownership of all the owners of the separate parts or the owners and of the parts that are in their function.

The Law on housing, on the other hand, regulates the types of housing facilities, management of the residential buildings, the relations between the owners of the separate parts and third parties, and the community of owners.

It also contains provisions that regulate housing in collective housing facilities (multi-apartment buildings) defined as residential buildings with two or more apartments such as apartment blocks, multi-story buildings, and solitaire.

Each collective housing facility can establish either a community of owners, registered in the Central Registry of NMK or appoint a Facility Manager with the purpose of residential building management of the common parts of the facility, common structural building elements, and common installations.

Common parts of the facility are the stairs, entrance windshields, corridors, bicycle rooms, washers, dryers, common basements, shelters, attics, janitor's workshops, janitor's apartment, rooms for waste disposal, and other premises intended for the common use of the owners of the separate parts, the land on which the building lays and which serves for its use, in accordance with the regulations for urban planning.

Common building elements in residential buildings are foundations, load-bearing walls and structures, ceilings, the roof, facade, chimneys, ventilation pipes, light windows, elevator openings, and other similar structures.

Common installations, devices, and equipment in residential buildings and apartment facilities for special purposes are the connection and internal electrical, electronic-communication network and assets, water supply, gas supply, and hot water supply installation intended for residential connections, and are located in the common one's rooms, elevators, supply, drainage, heating devices, telecommunications devices and cables, other associated antennas, lightning rods, firefighting devices, fire detection, and alarm devices, security lighting and all other utility and similar connections intended for the common use of the owners of the separate parts in the residential building.

5.2 Rights and Duties of Co-Owners

According to the Law on ownership and other property rights:

The owner of a separate part of a building has the right to use his part of the building according to their will and to dispose of it freely, as well as with the subsidiary parts of the building that serve his part of the building (cellar, garage, etc.).

The owners of the separate parts shall be entitled to use the common parts of a multi-apartment building which are part of the building as a whole (foundations, main walls, facade, stairs, halls, apartment for the concierge, elevators, electrical, sewage, plumbing and television networks, television antennas, wells, facilities for laundering and drying of clothes, roof, cellar, heating devices, skylights, chimneys, etc.).

The owners of the separate parts shall be entitled to use the common parts serving for the purpose of only some separate parts of the building (separate entrance, partition walls between two apartments or rooms, etc.).

If the separate part of the building is owned by two or more persons (ideal parts), the co-owner who wants to sell their part is obliged to offer it to the other co-owner, i.e., the other co-owners.

The owner is obliged to take care of the maintenance of his part of the building. If the owner caused damage while using his part of the building on other parts of the building that are owned by other persons or with it create other obstacles to the parts of the building that are in its function such as whole or of its parts that represent a separate whole, they are obliged to compensate for that damage, that is, remove other obstacles that are created.

The owner cannot make modifications on their part that could disrupt the architectural image of the building or reduce its reliability (stability), that is, the stability of some common part of the building or another owner, as well as cause damage to those parts.

The owner of a separate part is obliged to allow necessary interventions on their building part due to the removal of obstacles that disrupt the use of the right of ownership of another part of the building or parts of the building that are in function of the building as a whole.

When disposing of a garage that is part of the building or the building land that serves the building as a whole or only for some parts of the building, in the event that the alienation is carried out separately from the alienation of the apartment, the owners of the apartments primarily have the right to purchase separate parts of the building, and after them the tenants of the apartments in the same building.

In the case of paragraph 1 of this section, a garage sale cannot be carried out to a person who does not use an apartment in that building under conditions more favorable than those that are offered to apartment owners as separate parts of the building, that is, to the tenants of the apartments in that building.

The seller is obliged to submit the offer for sale through the house advice if there is advice, that is, to present it to the public inspection of the owners of the apartments.

The statement of acceptance of the offer is submitted directly to the seller.

According to the Law on housing:

The owner of a separate lot is obliged to regularly maintain the apartment and take care of the maintenance of their property in order not to cause damage or harmful effects, as well as to ensure uninterrupted use of premises by other owners.

The maintenance of residential buildings and apartments should ensure constant correctness, safety, and usability of all parts of the building as a whole, the aesthetically designed appearance, devices, installations, and equipment of the building, which serve all the owners of the separate parts, that is tenants of the building.

The maintenance of residential buildings and apartments includes the works of regular maintenance.

To carry out the measures and activities for regular maintenance of the residential building, the owners of the separate parts of the meeting of owners adopt a maintenance plan for a period of at least one year, and at most five years.

5.3 Liability of Co-Owners

Owners of separate units are responsible for paying all management costs and other costs arising from residential building management in accordance with the square footage of their units if the mutual relations agreement has not been determined otherwise.

All the owners of the separate parts are responsible for the costs incurred by undertaking activities based on decisions made in the manner prescribed by this law, regardless of whether they voted against the proposed decisions.

5.4 Rights and Duties of Condominium Associations

According to the Law on housing:

The owners of the separate lots can adopt a decision to establish a Community of Owners as a legal entity for the management of the residential building or to appoint a Facility Manager for the common parts of the facility. The decision can be made only with the consent of the majority of the owners of the separate parts.

With the decision to form a Community of Owners, the owners of the separate parts are obliged to adopt a statute of the

Community of Owners.

For the purposes of collective housing management, the owners of the separate parts of the residential building enter into an agreement for mutual relations which defines:

1) methods, conditions, and order of using the common premises and devices of the building;

2) the amount and the method of payment of the costs for the regular maintenance (investment and ongoing maintenance) of the common parts of the building that is owned by condominiums;

3) house order of the building;

4) way of establishing the reserve fund;

5) purpose of secondary premises used by the owners of the separate lots;

6) usage of the secondary premises for special purposes;

7) special restrictions on the right to use the secondary premises;

8) participation of the owners of the separate lots as parties in the legal transactions;

9) special powers of the manager of a residential building;

10) method of insurance of common parts of residential buildings and distribution of amounts for payment of insurance premiums;

11) way of notifying the owners of the special parts for the operation of management;

12) special services that exceed the limits of functioning of residential building (such as protection, reception service, etc.) and

13) way of regulating relations in case of adaptation, reconstruction, conversion, extension, and upgrading of a part of the building or the building in its entirety;

Owners of separate lots are responsible for payment of all management costs and other costs arising from a residential building in accordance with its proprietary parts if with the mutual relations agreement, has not been determined otherwise.

Residential building management is defined as monitoring and enforcement of the decisions made by the community of the owners of the separate parts in the building, representation in legal transactions and proceedings before the authorities for the purpose of functioning, maintenance, and preservation of the common parts of the residential building.

If there are more than two separate owners in residential building sections and more than eight separate sections, the owners of the separate sections can make a decision to establish a Community of Owners as a legal entity.

The Community of Owners has the right to conclude contracts for works on the management of the residential building and cannot perform any other activity.

The Community of Owners is a non-profit organization.

The financial operation of the Community of Owners is carried out in accordance with the Law on accounting of non-profit organizations.

If there are more than two separate owners in residential building sections and more than eight separate sections, the owners of the separate sections can determine that the residential building will be managed by a manager.

The relations between the owners and the manager are governed by a contract for performing management services for a period not longer than two years.

Rights and obligations of the manager:

1) executes the adopted decisions by the owners of the separate lots;

2) regular maintenance and functioning of the common parts;

3) represents the owners of the separate parts in management matters and on behalf of individual owners submits a lawsuit for relief from the obligation for payment, that is, a suit for debt for payment of costs and the expenses of the owner of the separate part;

4) represents the owners of the separate parts before the administrative authorities in the works of issuing permits and consents and in the registration procedures of real estate and other administrative procedures, in connection with the residential building and the land, as well as for other matters related to management;

5) prepares a plan for maintaining the residential building, a plan with dynamics for implementing this plan and taking care of the implementation of the plan;

6) prepares a calculation of the costs of managing the residential building and distributes the costs among the owners of the separate parts;

(7) receives the payments of the owners of separate parts on the basis of

monthly calculation and pays the obligations from the contracts concluded with third parties;

8) informs the owners of the special parts about their work and submits monthly and annual calculations;

9) prepares an annual report on facility management;

10) manages the reserve fund in accordance with the provisions of this law;

11) enumerates and numbers the apartments and reports the registration of the data in the authority that keeps the public books of real estate; and

12) should know the standards and norms for accessibility of persons with

handicap in the residential building.

The manager is obliged to regularly take care repairs on a smaller scale (replacement of light bulbs, plugs, small painting works, replacement of spare parts, and the like) of the common parts of the residential building. The cost of these repairs shall be borne by the owners of the separate parts in proportion to the size of their separate parts.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

A lease is a legally binding contract between a landlord and a tenant that covers the duties and obligations of all parties to the lease. It is a formal written agreement that can be concluded either by domestic or/and foreign natural and legal persons. Essential terms cover the validity period, specification of the subject of the agreement, consent of relevant institution for example bank in case there is an established pledge, and the price of the lease with other applicable fees included. Other important terms include but are not limited to the security deposit, extension of the agreement, termination of the agreement, disclaimers, applicable law and competent court as standard final provisions. The agreement should be notary-certified. In the recent few years, the notary who made the certification of the signatures of the parties, as well submits an application for evidence of such contract in the public books maintained by the Agency of the Real Estate Cadaster and this information it is shown in the Property Deed as public data. Before that, the parties were submitting the application by themselves. If the contracting parties wish to secure the fulfillment of the mutual obligations such as the regular payment of the lease amounts there is the possibility for implementation of an enforcement clause for force execution of the due owned amounts under the agreement. This clause requires a specific form of certification that is confirmation of a private document as public (solemnization) by the notary public. The enforcement clause is highly effective and preferable form by the parties.

6.2 Regulation of Leases

No there is no difference in the rules for the leases for diverse types of property. The essential clauses mentioned above cannot be excluded.

6.3 Registration of Leases

Yes, the commercial lease must be evidenced in the public books maintained by the Real Agency of Cadaster.

6.4 Termination of Leases and Renewals

The Lease can be terminated due to a breach of the material clauses by either party. The landlord is entitled to terminate the agreement due to a breach of the obligation for payment of the rent by the tenant, repeated wrong utilization of the real estate contrary to its purpose despite the given warning, and if the tenant has concluded an agreement for the sublease of the real estate without the agreed previous consent of the landlord as most common grounds. The tenant may terminate the agreement in the event the necessary repairs of the real estate hinder its use to a significant extent and for a longer period. As with any other contract, the lease agreement may be terminated without cause and the terms of such termination (notice period, penalties, etc.) are defined within the agreement.

The above reasons represent the most common grounds for termination of the agreement and are prescribed by the Law on obligational relations. Termination clauses are not mandatory and in case of their absence, the provisions of the Law on obligational relations shall be applicable.

Automatic lease renewals are applicable, it may be agreed with certain specifics in the agreement or if not agreed, the provisions of the Law on obligational relations shall apply. The Law on obligational relations prescribes that if the tenant continues to use the real estate after the expiry of the period and the landlord does not object it is considered that a new lease agreement is concluded on indefinite duration under the same conditions as the previous lease. The automatic renewal of the lease is not followed with automatic renewal of the evidence of the lease in the public books maintained by the Agency of the Real Estate Cadaster, the old agreement shall be evidenced until the application for new agreement is submitted.

6.5 Rent Regulations and Rent Reviews

Rent regulation is not established in the Republic of North Macedonia, the lease prices are freely established on the market.

6.6 Services To Be Provided Together With the Lease

No services within the lease are prescribed in the Law on obligational relations, however, the parties are free to agree on whether some services shall be provided during the rent.

6.7 Fit-Out Works and Their Regulation

The tenant is obliged at its own expense to make reparations that come with normal utilization of the real estate. Investments in real estate, if not previously agreed between the parties, do not have any specific treatment by the law, and in

such a case the tenant is not entitled to any compensation with the exception to the investments necessary and urgent to prevent damage of the real estate or to prevent loss of some expected benefit. The necessary investments have legal treatment as works without a warrant and in such a situation the tenant is obliged immediately to notify the landlord about the commenced works and if possible, the landlord to undertake and complete such works. After completing the works, the tenant should notify the landlord about the completed works and hand over the completed works. In such situations, the work undertaken by the tenant should be appropriate to the situation and they are entitled to compensation for all necessary and useful expenses and compensation for damages if any. Investments do not have any specific tax regime because it can be agreed investments that are usually adaptation and modification of the space such as interior design or unpredicted necessary and urgent repairs.

6.8 Transfer of Leases and Leased Assets

In the case of transfer of ownership of the real estate that was previously leased, the new owner takes the place of the former landlord and acquires the same rights and obligations under the agreement. The new landlord does not have a right to terminate the lease agreement prior expiry of the term just because of the transfer of ownership. For the obligations of the lease to the tenant, the previous landlord is also liable as a joint guarantor.

When a lease agreement is concluded, and the real estate is in factual possession of the new owner, he steps in the place of the previous owner with all rights and obligations under the agreement provided that in the moment of conclusion of the agreement for the transfer of the ownership he was familiar with the lease agreement. Otherwise, if the new owner is not familiar with the lease is not obliged to hand over the leased real estate to the tenant and the latter may request compensation for damage from the previous owner.

The tenant is entitled at any time to terminate the agreement due to the transfer of ownership respecting the legal or the agreed notice periods.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

Depending on the scope of urban planning, as well as whether the subject of the planning is of national or local importance, the following urban plans are adopted:

1. General urban plan;

2. Detailed urban plan;

3. Urban plan for a village;

4. Urban plan for non-residential areas and

5. Urban plan for areas and buildings of state importance.

An urban plan for areas and buildings of state importance is a plan that is prepared in accordance with the Spatial Plan of the Republic of North Macedonia and serves for its implementation and development and is adopted for areas and buildings of state importance that are not covered and cannot be regulated by urban plans of local importance.

Areas and buildings of state importance are considered to be areas and buildings, infrastructures, and superstructures of international, republican, regional, and more municipal nature and of strategic importance for the state.

Only in the procedure for adopting the Urban plan for areas and buildings of state importance and for non-residential areas, feasibility study is a pre-condition and has a separate regime of planning.

The feasibility study is prepared before the urban plan for areas and buildings of state importance and the urban plan for non-residential areas for complex buildings of local importance that do not have a construction or urban planning history, as a rule for engineering buildings or other large and complex buildings from the groups of purpose classes G and E for which there are no previous planning or project data, that is, for spaces that are being arranged for the first time and for which there is a need for previous research and assessments.

A feasibility study is prepared to ensure objective and informed decision-making for starting the procedures for the adoption of an urban plan and urban project, from the aspect of the spatial, ecological, financial and economic justification of the construction project, the construction of which requires the urban plan.

7.2 Can a Planning/Zoning Decision Be Appealed?

According to the Law on Spatial and Urban Planning, there is an opportunity to submit comments on the urban plan, during the public presentation and the public survey.

For the conducted public presentation and public survey, a report is drawn up with a rationale for the accepted and unaccepted comments on the urban plan, by an expert commission formed by the mayor of the municipality. The report is an integral part of the plan, and the accepted comments from the public survey must be incorporated into the draft plan.

Besides the procedure regulated in the Law on Spatial and Urban Planning, there is a possibility for anyone to submit an initiative to start a procedure in front of the Constitutional Court for evaluating the constitutionality of a law and the constitutionality and legality of a regulation or a general act,

by submitting an Initiative. The petitioner of the initiative and the governing institution that adopted the contested act are participants in the proceedings in front of the Constitutional Court. The procedure concludes with an adoption of a decision by the Constitutional Court.

The decision for adoption of an urban plan can be the subject of an initiative for evaluating its constitutionality and the legality in front of the Constitutional court.

Bancilă / Diaconu

CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2025

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1 Real Estate Ownership

1.1 Legal Framework

This introductory section describes the general legislative framework and the principles governing private property in Romania.

Private ownership protection and its main principles are regulated by the Constitution (Article 44) and by the Civil Code (Article 555 and the following), together with Law No. 71/2011 on the implementation of the Civil Code. Other main sources of regulation on this matter are:

- Law No. 7/1996 on cadastral works and real estate publicity;
- Law No. 10/1995 on construction quality;
- Law No. 50/1991 on the permitting of construction works;
- Law No. 350/2001 on urban development and land use planning;
- Law No 18/1991 on land patrimony;
- Law No. 1/2000 on the reinstatement of ownership rights over agricultural and forest lands;
- Law No. 10/2001 on the regime of the real estate illegally seized between 6 March 1945 and 22 December 1989;
- Law No. 165/2013 on certain measures for finalizing the restitution process for the real estate illegally seized by the state during the communist regime;
- Law No. 247/2005 on property and justice reform;
- Law No. 312/2005 on the acquisition of private ownership rights over land by foreign citizens, stateless persons, and legal entities;
- Law No. 17/2014 on the sale of extra muros agricultural lands;
- Law No. 331/2024 regarding the Forestry Code etc.

The Constitution has the greatest degree of stability in the Romanian law system. Also, the current Civil Code, which entered into force on October 1, 2011, was subject to few amendments ever since, thus we may reasonably expect a high level of stability regarding private property regulations. The other abovementioned laws have been subject to frequent amendments.

Please note that for specific issues or situations which originated before October 2011 (the entering into force of the current Civil Code), the former Civil Code of 1864, and other laws in force at the given time apply (e.g., in the case of an acquisitive prescription).

Many of the Romanian laws governing real estate properties have been enacted as a result of the nationalization of private property during the communist regime and their main purpose is either to restore the properties to their rightful owners or to compensate them.

Before acquiring real estate properties in Romania, investors should first research if any claim based on the special restitution laws has been filed in relation thereof.

Types of Property

As per Romanian law, there are two forms of property, namely public and private property.

Public property is mostly regulated through separate legislation and is inalienable and imprescriptible, meaning that it cannot be freely bought, donated, or otherwise transmitted to third parties. Also, public property cannot be seized, and it can bear no securities.

Public property belongs to the state or to the territorial-administrative units, while private property may be owned by the state, the territorial-administrative units, as well as by any natural and legal persons.

The main attributes of the private ownership right are possession, usage, and disposal, which can be cumulated or dismembered between several persons (e.g., one having the usufruct, or the right of use and fructus, while the other having the bare ownership). If all the above-mentioned attributes belong to the same owner, we are in the presence of a full ownership right.

One of the most used dismemberments in Romania is the superficies right (the right which entitles its owner to build or to own construction on a third party's land), which may be constituted for a period of a maximum of 99 years.

Restrictions for Foreigners in Acquiring Real Estate

According to the Constitution, private ownership protection is equal for all. Foreign citizens and stateless persons can acquire ownership rights over lands (i) according to the conditions resulting from Romania's accession to the European Union and to other international treaties to which Romania is party, (ii) on the basis of reciprocity, or (iii) if the land is acquired by legal succession (as opposed to testamentary succession).

The general rule for citizens of the European Union and European Economic Area (Member States), for stateless persons domiciled in Member States, and for legal entities established according to the legislation of a Member State, stipulates that they can acquire ownership rights over real estate (including land) in the same conditions as Romanian citizens and Romanian legal entities, under the conditions provided for in Article 3 of the Law No. 312/2005.

As per Article 4 of Law No. 312/2005, starting from January

1, 2012, the above-mentioned persons, who are not residents of Romania, are allowed to directly purchase real estate properties (lands) in Romania for the purpose of establishing a secondary residence in case of natural persons or a secondary registered office for legal entities.

Starting January 1, 2014, such persons are also entitled to directly purchase agricultural lands, forests, and forest lands, as stipulated under Article 5 of Law No. 312/2005. Nonetheless, specific restrictions for such foreigners are provided by Romanian law in case of extra muros agricultural lands (i.e., agricultural lands located outside the city limits). Such lands can be acquired only by Romanian citizens or by foreign persons who resided for a certain amount of time in Romania.

Citizens of a non-Member State, stateless persons domiciled outside a Member State, and legal entities registered in a non-Member State can only acquire land in accordance with applicable international treaties and on the basis of reciprocity. However, the conditions for acquiring ownership rights for these categories cannot be more favorable than those applicable to Member States citizens and/or to legal persons established in a Member State.

Expropriation of Ownership

The expropriation of private property is regulated through the Romanian Constitution and subsequent legislation. However, expropriations may only be performed for public utility reasons established by the law, with the payment of a preliminary and fair compensation.

The compensation is computed to reflect both the effective value of the expropriated real estate and the damages caused to the owner by the expropriation (i.e., in case of a partial expropriation, the diminishing of the value of the remaining real estate should also be considered).

Even if the compensation should reflect the market value of the expropriated real estate, in practice, expropriators usually offer only the amount calculated according to the pricing studies performed for and adopted by the Chambers of Public Notaries (Notaries Price Chart), whereas it is to be noted that such studies contain only the minimum indicative values for real estate properties in a specific locality, not always reflecting the market price. Moreover, the initial main purpose of such studies was to combat tax evasion, irrespective of the price agreed in a sale purchase agreement (if lower than the minimum value provided for in the study adopted by the Chamber of Public Notaries in a city for a specific year), the notarial fees and Land Registry expenses are computed based on these minimum values.

The expropriating authority must first attempt to negotiate a settlement with the owner being expropriated. Should a settlement not be reached, or should there be a disagreement regarding the compensation, the dispute shall be resolved by the competent courts of law, whereas an independent expert may be appointed to evaluate the asset.

The basic legislation on expropriation was amended in August 2018 in respect of the categories of public utility works triggering the expropriation and of the deadline granted to owners for submitting the relevant documents for the fair compensation to be calculated.

Moreover, on November 15, 2021, the Supreme Court stated in a mandatory decision that the courts are bound to consider all the criteria established by the specific legislation when establishing the compensation due for expropriation.

1.2 Registration of Ownership

In Romania, real estate properties are registered with the Land Register, which is a publicity system of all legal agreements and deeds regarding real estate and it is administered by the National Agency for Cadaster and Real Estate Publicity. The legal framework is the Civil Code and Law No. 7/1996, mentioned in Section 1.1.

The registrations are performed in separate land books, opened for each individual land plot. Each land book contains the cadastral number of the real estate, its postal address, a description of the real estate (land plot with or without buildings erected thereupon, dimensions of the real estate, its use categories, such as agricultural or constructible land), the name/s of the owner/s and other persons which have rights over the real estate, such as usufructuaries, as well as any encumbrances registered with the respective property (e.g., mortgage, rights-of-way, and/or any other third party rights, etc.). It also contains the number and date of the agreements or deeds based on which the registered rights were established.

Currently, not all real estate properties are registered in the Land Register or have cadaster documentation in place, this is the reason why the registration with the Land Register still has only an opposability effect. According to the Civil Code and its enforcement law, the registration with the Land Register shall have a constitutive effect once the cadastral works for a particular administrative-territorial unit are fully completed (i.e., all real estate properties belonging to an administrative-territorial unit are being measured, and their cadastral documentation are officially registered in the electronic integrated information system for cadastre and land register in Romania, e-terra). Whereas such cadastral works were finalized for an insignificant number of smaller localities (communes, but mostly villages), it remains uncertain when those works will be completed at the city or county level, not to mention nationwide.

Once the right over a real estate property is registered with the Land Register, any modification of its legal or material structure must also be registered with the Land Register, otherwise,

such amendment is not opposable to third parties. For example, if a land plot is being partitioned, each new lot resulting from such partition will represent a new real estate, which is to be separately registered in its own (new) land book.

Several registrations with the Land Register are not mandatory but are required for the same opposability purpose in relation to third parties, such as:

- placing an individual under judicial interdiction, and the lifting of such measure;
- requests for declaring the death of an individual, the court decision on the death of an individual, and the annulment/modification thereof;
- lease agreements in respect of the real estate property;
- the so-called lex commissoria (unilateral termination clauses) inserted into an agreement, and the respective executed declaration of termination;
- conventional pre-emption rights;
- the court files relating to the registered real estate property.

This requirement is not absolute, meaning that one can prove that third parties had gained knowledge about such agreements and deeds by other means, except when the law states that such external knowledge is not sufficient to replace the registration.

Registration with the Land Register is not required when the real estate property is obtained by way of succession, natural accession (i.e., an addition to property by natural forces), seizure, expropriation, and in other cases provided by the law. However, land book registration is still necessary, should the owner wish to transfer the real estate, prior to such transfer.

1.3 Publicity of Real Estate Register

Any person can obtain a land book excerpt about a certain real estate (extras de carte funciara) from the National Agency for Cadaster and Real Estate Publicity, including online/electronically. The cost is RON 20 (approximately EUR 4) per excerpt, and it is not necessary to justify an interest for such a request, as one of the main purposes of the land book is to inform third parties about land book registrations.

Also, any person can request information from the integrated information system for the cadastre and land register and may consult the cadastral and legal regime of the documents registered therein.

1.4 Protection of Ownership

Currently, as mentioned in Section 1.2., the registration in the Land Register has an opposability effect and it only creates a presumption of ownership, not an absolute proof of ownership. Therefore, the registrations provided in the Land Register may be challenged by any interested party in a court of law.

However, the current Civil Code strengthens the position of subsequent buyers registered with the Land Register, and who acquired the real estate property in good faith by time barring the claims for rectification of the Land Register filed by any interested party. Thus, the Civil Code provides for a three-year term in case of onerous transfers, whereas in the case of real estate acquired by donation or testament the statute of limitation for filing such rectification claims is five years.

We note that no real estate may be sold without it first being integrated into the cadaster and Land Register. In case of unlawfully used or occupied property, the owner may initiate an eviction claim, following the procedure provided by law.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

Under Romanian law, a share deal involves the transfer of ownership over shares in a company (i.e., a special purpose vehicle (SPV) in which the physical real estate asset is held), which leads to the indirect transfer of ownership over the real estate belonging to such company, whereas an asset deal involves the transfer of ownership over one or more real estate assets owned by a company (or by a natural person).

Whereas a share deal is preferred by sellers, especially when the assets/portfolios are being held by one or several SPV/s, as it will allow the seller to avoid latent capital gains tax and transfer taxes, and thus command higher net proceeds, whilst extinguishing any ongoing involvement with the SPV owning the real estate assets, asset deals are straightforward and preferred by buyers as it will allow them to avoid buying a company with a long tax, financial and possibly also employment history, and to reset the tax base of the property for local tax purposes.

In the case of a share deal, the operational permits obtained in view of the company's activity performed in relation to the real estate will maintain their validity (for example, in the case of a company operating a hotel, the certifications issued from the Ministry of Tourism remain available), while in case of an asset deal, such operating permits will have to be obtained again.

For the validity of a share deal, a document under private signature is sufficient, while an asset deal implies the conclusion of a notarized document and the payment of notarial expenses and fees for registration with the Land Register amounting to approximately 1.2% of the purchase price.

The asset deal structures are more predominant in daily transactions on the Romanian market (single assets transactions involving mostly housing units or residential assets, as well as land plots with no constructions). However, in the case of

acquisitions of real estate portfolios and income-producing real estate assets, there is a clear preference for sellers to opt for share deals.

Market trends

Due to the approach of remote work triggered by the COVID-19 pandemic and currently still present in the market, the surface and configuration of the sold residential units are weighted heavily in most acquisition decisions.

Although many businesses are currently in the process of implementing return-to-office policies, the changes brought by the COVID-19 pandemic are still impacting the market.

The agribusiness sector was affected by the legislative uncertainty caused by Law No.175/2020, followed by the Government Emergency Ordinance No. 104/2022 (GEO no. 104) and Law 116/2024, which brought fundamental changes to Law No. 17/2014 on the sale and purchase of agricultural lands in Romania located outside the city limits (extra muros).

Currently, there is an obligation of the seller of agricultural lands to pay an 80% tax if the sale takes place within a term of eight years from the acquisition date. Such tax shall be applied to the positive difference between the value of the agricultural lands at the sale date and the value at the purchase date, determined according to (i) the indicative value established by the expert's report drawn up by the Chamber of Notaries Public or (ii) the minimum value established by the market survey carried out by the Chambers of Notaries Public, as appropriate, from that period.

The 80% tax also applies in case of transferring (before the expiration of an eight-year period from the time when the land was acquired) of the controlling interest in a company that possesses ownership rights to one or more agricultural lands located outside the city limits, which consist of more than 25% of the company's total real estate assets (including any land, buildings, or structures built on or incorporated into the land, recorded in accordance with the applicable accounting rules).

In this case, the tax will be applied on the positive difference between the value of the lands at the sale date and the value at the time of the acquisitions of such lands, determined according to the indicative value established by (i) the expert's report drawn up by the Chamber of Notaries Public or (ii) the minimum value established by the market survey carried out by the Chambers of Notaries Public, as the case may be, from such period, as appropriate, from that period.

If the legal entity owns multiple agricultural lands located outside the city limits, the 80% rate is applied to the total value calculated by summing the positive differences of the lands acquired no more than eight years before the alienation of the control package, without taking into account the negative differences.

The sale performed without paying the relevant 80% tax is prohibited and is sanctioned with relative nullity.

In practice, the calculation and collection of the abovementioned tax was not feasible due to the absence of detailed regulations in this respect. Currently, this situation was unblocked by two normative acts, which entered into force as of February 2, 2023, namely (i) Order no. 396/2022 issued by the Minister of Agriculture and Rural Development and (ii) Order no. 883/2023 issued by the Minister of Finances, approving the procedure for the calculation, collection, and payment of the 80% tax.

The above-mentioned procedure establishes, among others, the following:

- as a general rule, the tax is computed and charged by the notary public prior to the authentication of the sale deed;
- When transferring the controlling interest, the seller is required to report the income to the relevant central tax authority within a maximum of 10 days from the date of the transfer, using the supporting legal document as the basis for the declaration.
- no tax is levied on the direct sale of agricultural land located in the extra muros area, which was acquired by inheritance, partition, or any acquisition deed other than a sale-purchase agreement.
- for the situation of indirect sale, through the sale of the controlling interest of the company, it seems that the intention of the legislator is that the tax is applicable irrespective of how the company acquires the land in question;
- if the transfer of ownership of the land or of the controlling interest in the company is achieved through a court decision, the courts issuing the final court decision shall communicate the decision and the related documentation to the central tax office within 30 days of the date of the final decision and shall forward them to the competent central tax office. The latter will assess the tax and issue the tax decision within 60 days of receipt of the documentation;
- the procedure also provides that, if the transaction based on which the seller paid the tax due to the notary public is subsequently canceled, the reimbursement of the tax paid may be requested by the taxpayer under the common applicable procedure.

2.2 Share Deal

In Romania, the incorporation, activity, and organization of companies are mainly regulated by Companies Law No. 31/1990 and the provisions of the Romanian Civil Code.

Usually, share deals contain conditions precedent which are to be fulfilled by the sellers and are structured into two phases: signing and closing. After closing, the transfer of ownership over the shares of the target company is registered with the Romanian Commercial Registry.

In the case of share deals, the following key factors should be considered by a potential investor:

- the purchaser of shares in a company shall acquire all the historical obligations of the transferring business (including tax obligations), as well as the bad or good faith of the seller when he acquired the property;
- the due diligence process in the case of a share deal is a lengthier one, as along with a full scope legal and technical due diligence exercise, also a tax and a financial one are needed to properly assess the potential risks of the entire company, not only of the immovable assets;
- a share deal does not imply the conclusion of authentic deeds and no notarial fees and land registration expenses are to be paid;
- in the case of a share deal, most permits obtained by the target company remain valid (in some specific cases, a notification to the issuing authority might be needed in respect of the ownership transfer over the shares), as well as all the agreements entered into by the target company (except for the ones containing a change of control clauses);
- any environmental liability, if the case, should be clearly regulated between the parties of the share sale purchase agreement by means of warranties and specific indemnities.

It is customary for the parties to a share sale purchase contract to agree upon specific representations and warranties to customarily cover: (i) the valid ownership history of the company, (ii) compliance with applicable laws, (iii) completeness and accuracy of the disclosed information, (iv) protection against third-party claims, (v) lack of encumbrances, (vi) status of on-going contracts, especially of lease agreements, (vi) no tax liabilities, (vii) provisions related to the processing of personal data, etc.

2.3 Asset Deal

In Romania, an asset deal is commonly structured as a one-step transaction and requires the conclusion of an authenticated sale purchase agreement before a public notary. The registration with the relevant Land Register of the change of ownership over the sold real estate property is performed by the public notary following the conclusion/authentication of the sale purchase agreement and payment of the notarial expenses and land book registration fees.

When concluding an asset deal, an in-depth legal due diligence analysis over the full title chain over the property is to be performed in order to determine if the seller is the legal owner of the respective real estate and that no title flaws are to be found in the previous title deeds with respect to that property, i.e., that such title deeds comply with all legal provisions in force at the moment when the respective title deed has been issued/concluded. As part of the legal due diligence procedure, drafting and submitting customary inquiry letters to the public authorities related to the legal status of the real estate (including the existence of any potential restitution claims on the land), reviewing the answers, and performing checks in available public registers and of public information sources in relation to the land and the seller are usually performed.

At the same time, zoning/town planning certificates and various confirmations from the competent authorities are usually requested to acknowledge both the legal status of the real estate and its applicable zoning and construction regulations and parameters, especially when the investor intends to erect constructions on the respective land plot. Moreover, in the case of specific regulated real estate properties (depending on their location in the vicinity of the country border, near military sites or airports, to name just a few), specific endorsements from other public authorities may be required.

In the case of high-profile transactions, technical and environmental due diligence investigations are common.

Most of the risks associated with real estate properties in Romania arise as a result of the lack of private ownership during the communist regime, which rendered cadastral and land book operations unnecessary. Therefore, no cadastral measurements and land book registrations were performed in an institutionalized manner before 1990. These aspects, in conjunction with the inconsistent organization and implementation of the restitution process after 1990 for the real estate properties that had been abusively confiscated during the communist regime, generated most of the risks currently associated with real estate transactions in Romania.

As such, boundary conflicts are a common issue that mainly appeared due to the implementation mechanism of land ownership restoration, which implied that the ownership right

was recognized through an ownership certificate that was used instead of the ownership title, which was issued afterward. Subsequently, the technical formalities for the identification, establishment of location, and effective land appropriation were not fulfilled. This mechanism resulted in several inconsistencies between the situations provided in the registries and the reality in the field, which led to the overlapping of the properties' boundaries.

Other notable risks usually emerge from hidden defects, third-party claims against the ownership title of the current owner, potential mandatory legal provisions that were not followed in the previous processes of change of ownership, etc.

Generally, the parties agree on specific guarantees related to the ownership title, hidden defects, protection against third-party claims, encumbrances, the status of ongoing agreements, tax payments, as well as any defects existing when the sale takes place. It is possible and even customary in the case of high-profile transactions for the purchaser to obtain title insurance with respect to certain title flaws related to the real estate asset acquired which were identified during the legal due diligence exercise.

For information on the fees and taxes associated with an asset deal, please see Sections 2.5. and 4.1.

2.4 Disposal Process

In Romania, agreements having as an object the transfer of ownership over real estate must be concluded in writing and authenticated by a public notary in order to be valid. When executing the agreement, the parties should be present in person or should be represented by attorneys-in-fact who are empowered by means of authenticated powers of attorney. Should any of the parties be a legal person, the public notary is obliged to verify if its representative is entitled to sign the sale and purchase agreement having as object the real estate.

Moreover, the notarial expenses and the land book registration fees should be paid on the signing date. For more information on the fees and taxes associated with an asset deal, please see Sections 2.5 and 4.1.

In case the sold real estate property is comprised of land and buildings with a net area of more than 50 square meters, energy performance certificates must be obtained by the seller and presented to the notary when authenticating the sale purchase agreement, otherwise, the sanction of relative nullity of the sale purchase agreement applies. Law 372/2005 on the energy performance of buildings regulates some exemptions from this obligation, in case of (i) protected buildings and monuments that are either part of protected constructed areas, or have a special architectural or historical value; (ii) buildings used as places of worship or for other religious activities and which do not provide, according to their declared use, interior comfort conditions; (iii) temporary buildings intended to be used for periods of up to two years; (iv) residential buildings that are intended to be used for less than four months per year and other buildings which require low energy consumption or where indoor comfort needs to be ensured for less than four months per year and (v) independent buildings, with a net area of less than 50 square meters.

Also, it is customarily for the seller to hand over to the purchaser (in original counterparts or certified copies) the entire title chain documentation related to the sold property and the technical deeds related to the constructions (if applicable, such as building permits, commissioning protocols and land book registration proofs). The tax certificate attesting the full payment of the local property taxes related to the immovable asset is preserved by the public notary in the notarial archive of the notarized deed, whereas the lack hereof or a tax certificate attesting outstanding taxes is sanctioned with the absolute nullity of the sale purchase agreement.

2.5 Registration of Change of Ownership

The public notary who authenticated a sale purchase agreement with respect to a real estate property shall by default request the registration of the change of ownership to the relevant Land Register office. Registrations in the relevant land books are performed by the competent cadaster and real estate publicity offices subordinated to the National Agency for Cadaster and Real Estate Publicity.

For the purpose of executing the agreement having as an object the constitution or the transfer of a real right onto a real estate property, a land book excerpt for notarial purposes is obtained by the respective public notary authenticating the respective deed.

When signing a sale purchase agreement, the following fees are usually paid by the purchaser: (i) the land book registration tax, computed usually at the declared value of the transaction (or at the minimum indicative value of the real estate as indicated in the Notaries' Price Chart, if the declared price is lower than such minimum value), which ranges between 0.15% and 0.5% of the immovable asset's price, (ii) as well as the public notary's fees amounting from approximately 0.6% (in case of real estate properties sold for a price higher than RON 600,001 – where the notary fee is computed from a fixed amount of RON 6.405 lei plus 0.6% applied to the amount exceeding RON 600,001) up to 2.2% of the immovable asset's price (yet not less than RON 230 in case of real estate properties with a value of up to RON 20,000). VAT will also apply to the public notary fees if the notary is registered for VAT purposes.

The registration with the Land Register of the change of ownership over real property is to be finalized in approximately seven business days as of the execution of the sale purchase

agreement. An expedited procedure that shortens the deadline up to two business days is possible if an emergency fee is paid amounting to four times the normal fee, yet not higher than RON 5,000, which is to be paid in addition to the normal fee.

2.6 Risks To Be Considered

The general principle under Romanian law is that privately owned real estate properties are freely transferrable. Some specific restrictions are expressly regulated in the law, such as the legal pre-emptive rights regulated for agricultural lands located outside the city limits (under Law No. 17/2014 there are no less than seven classes of pre-emptors), for properties classified as historical monuments (under Law No. 422/2001 the Romanian state, respectively the territorial-administrative units benefit from a legal pre-emption right), for forest lands (under the Forestry Code the co-owners and the neighbors enjoy a legal pre-emption right), but also for agricultural lands located within the city limits (the land leaseholder (arendas) holds such a legal pre-emption right under the Civil Code).

As mentioned, under Law 17/2014 the following seven pre-emptors' classes are regulated: (i) first-rank pre-emptors: co-owners, spouses, relatives, and in-laws up to the third degree, included, in this order; (ii) second-rank pre-emptors: owners of agricultural investments for the plantations of trees, vines, hops, exclusively private irrigations located on the land offered for sale and/or agricultural tenants. If on the lands subject to sale there are located agricultural investments for plantations of trees, vines, hops, irrigations, the owners of such investments have priority for purchasing such land; (iii) third-rank pre-emptors: owners and/or tenants of agricultural land adjacent to the land subject to sale, pursuant to paragraphs (2) and (4); (iv) fourth-rank pre-emptors: young farmers; (v) fifth-rank pre-emptors: the Academy of Agriculture and Forestry Sciences Gheorghe Ionescu-Sisesti and the research-development units in the agricultural, forestry, and food sectors, regulated by Law No. 45/2009 on the organization and functioning of the Academy of Agriculture and Forestry Sciences Gheorghe Ionescu-Sisesti, and the research and development system in the agricultural, forestry and food sectors, and the education institutions with agricultural profile, for the purpose of purchasing agricultural lands located outside of built-up areas which have the destination strictly required for agricultural research and which are adjacent to the lands owned by them; (vi) sixth-rank pre-emptors: natural persons domiciled/residing in the territorial and administrative division where the land is located or in the bordering territorial and administrative division; and (vii) seventh-rank pre-emptors: the Romanian state, through the Agency of State Domains.

Through Decision No. 58/2022, the Romanian Supreme Court establishes that it is not necessary to comply with the preemption procedure provided for in Article 4 para. (1) of Law no. 17/2014 when concluding an agreement having as object the alienation of possession of agricultural lands located outside the built-up area.

Contractual pre-emptive rights are also possible and, if properly constituted and publicized, should be duly considered when concluding a sale-purchase agreement. However, a set of rules should be observed when constituting such contractual pre-emptive rights, as follows:

• contractual pre-emptive right must be registered with the relevant land book in order to be opposable to third parties;

• contractual pre-emptive rights may not be transferred to a third party, and such right may be exercised during an enforcement procedure;

• legal pre-emptive rights shall always prevail in case of conflict with a contractual pre-emptive right;

• contractual pre-emptive rights shall be terminated upon the death of the beneficiary if no term or such a right was expressly specified in the agreement; however, should the parties agree on a term longer than five years for the duration of a contractual pre-emptive right, such term shall be reduced to five years ope legis.

Potential Remedies in Case of Acquiring a Real Property with Defects:

In the case of a regular sale procedure, the seller transfers the ownership right over the immovable asset free of any encumbrances, defects, or legal claims.

Should the real property be affected by visible defects, the purchaser is supposed to indicate such defects when concluding the sale agreement, under the sanction of losing the right to claim any remedies following such moment.

On the contrary, should the real property be affected by hidden defects, the purchaser may request the seller to repair such defects at his/her expense, reduce the purchase price, or, in some cases, even terminate the agreement.

3 Real Estate Financing

3.1 Key Sources of Financing

The general legal framework in relation to financing is the Civil Code and the regulations issued by the National Bank of Romania, which encloses norms for different types of mortgages, liens, and personal guarantees.

The main type of security used in real estate transactions is the mortgage over the real estate itself. It is not excluded that the buyer provides another security, be it a mortgage over another real estate or a lien over movable assets, such as accounts receivables, bank accounts, stock, intellectual property rights, or insurance policies.

According to the applicable law, a mortgage may also be established over the bare property, over the usufructs or superficies rights, or over a share of the real estate ownership right, in case of co-ownership. However, in some cases, banks might be reluctant to accept mortgages over such rights, because of the difficulty to enforce them.

Some banks do not accept a mortgage over any kind of real estate. For example, mortgages over industrial facilities such as warehouses, production halls, etc. are not always accepted.

Personal guarantees can also be an option, and the most common is called "fideiusiune", where a third party guarantees with his/her own personal patrimony to pay the credit in case of a buyer's default. The guarantor must prove that he owns sufficient assets or income to be able to pay and that he lives/resides in Romania. Also, the bank/creditor has the right to choose a specific guarantor, whereas the two above-mentioned conditions are no longer applicable in this particular case. Romanian law also provides some forms of credit enhancements, such as bank letters of guarantee or letters of comfort.

3.2 Protection of Creditors

The most utilized type of security is the mortgage over the real estate object of the acquisition or over other real estate owned by the buyer or by a third party/debtor if accepted by the bank. The mortgage agreement is concluded and authenticated before a public notary and is registered in the Land Register. Other kinds of mortgages, the ones over movable assets (e.g., on receivables) must be registered in the Electronic Archive of Security Interests. The bank performs an analysis of the security, including an evaluation and due diligence about other securities over the asset and/or other securities provided by the buyer (e.g., on assets belonging to third parties).

A facility offered by law to creditors is that the mortgage agreement is an enforceable title (a writ of execution) if all its validity conditions are met, namely the contract must: (i) be authenticated by a public notary, (ii) mention the loaned amount, the identification information for the person who establishes the mortgage, and the creditor, (iii) show the cause of the obligation guaranteed with the mortgage (e.g. a loan/credit), and (iv) clearly describe the mortgaged property.

The guarantor (mortgagor) is forbidden to destroy, deteriorate the asset, or diminish its value in any way except for normal wear and tear or in case of necessity. The creditor can ask for damages from the guarantor in such a case.

4 Real Estate Taxes

4.1 Transfer Taxes

Under the applicable provisions of the Tax Code, an income tax is owed by the individual who obtains yield from the transfer of ownership rights (or of any dismemberments) over real property (i.e., land free of constructions/constructions of any kind and the relevant share quota of the affected land). Such income tax is computed and collected by the Notary Public authenticating the transfer deed, while the registration of the transfer deed with the Land Book is subject to the payment of the income tax.

Additionally, for the transfer of any ownership rights (including its dismemberments) over constructions of any kind and their related land plots by means of inter vivos deeds, as well as over lands (free of constructions) of any kind, individuals owe a tax of 3%, for properties owned over a period of less than three years and a tax of 1% for properties owned over a period of over three years, which shall be computed on the taxable income, calculated as per the above.

The abovementioned tax shall not be due in the following cases:

- when the ownership transfer over the lands and constructions of any kind was acquired through the restoration of the ownership right under the special restitution laws;
- when the ownership transfer was completed by way of donation between relatives and in-laws (up to and including the third degree), as well as between spouses;

in case of annulment with a retroactive effect of the transfer deeds having as object real estate properties.

4.2 Specific Real Estate Taxes

Landowners are compelled to annually pay a land tax towards the local budget, computed considering the total surface of the land, its location, and use, as per the classification made by the local council.

Building owners have a legal duty to annually pay a building tax towards the local budget, which is computed based on certain percentages applied to a tax basis; both the percentages and the tax basis vary, mainly depending on the owner (individual or legal entity), use and location of the building. Exemptions may apply for both the tax related to the owned land and the tax related to the owned building.

The issuance of building permits is subject to a tax in the value of:

- 1% of the estimated value of the construction works, including the value of the relevant installations (except for residential construction works);

- 0.5% of the estimated value of residential construction works or annexed buildings construction works;
- 3% of the estimated value of individually authorized site organization works.

4.3 VAT General Provisions

As a rule, the income arising from lease agreements is exempted from VAT. However, landlords have the option to apply the VAT of 19% on rent.

The following VAT rules apply to the sale of real estate:

- The standard VAT rate is 19%;
- The 9% reduced VAT rate applies for supplies of social housing under the threshold of RON 600,000, exclusive of VAT, with a maximum useful surface of 120 square meters;
- VAT exempt with an option to tax can be applied in case of old buildings or non-building land (potentially subject to VAT adjustments);
- Reverse charge mechanism, namely no VAT is charged by the seller, while the beneficiary accounts for 19% VAT under reverse charge mechanism, in case of taxable transactions of real estate between taxable persons which are registered for VAT purposes in Romania).

5 Condominiums

5.1 Legal Framework for Condominiums

Pursuant to the provisions of Law No. 196/2018 on the incorporation, organization, and operation of owners' associations and the administration of condominiums, it is customary to incorporate an owners' association for the administration of condominiums. A condominium is defined as a real estate property comprised of a land plot with one or more constructions, housing at least three individual properties consisting of both residential units and/or residential units and spaces with another use, and of the share quotas of the common property.

The owners' association is comprised of: (i) the general assembly, (ii) the executive committee, (iii) the president; and (iv) the censor or censors' commission. The owners' association is operating similarly to a company.

5.2 Rights and Duties of Co-Owners

The co-owners of real property have the following rights:

- to participate, to vote, and to candidate in the general assembly of the owners' association;
- to be informed of all aspects regarding the activity of the owners' association, and to receive copies of all related documentation;
- to receive input on their contribution to the owners' association's expenditures, and to challenge such contribution within 10 days of its publication;
- to submit a written complaint to the owners' association, should any co-owner consider themselves aggrieved in relation to one of their rights;
- to address to the competent court of justice, should any co-owner consider themselves aggrieved by the non-fulfillment or inadequate fulfillment of the executive committee's duties.

The co-owners of real property have the following duties:

- to use the common parts and the individual space as per their destination, without causing any hindrance to any other co-owner;
- to fully and duly pay their share to the owner's association fund;
- to notify the president of the condominium association of any change in the structure and number of family members/lessees/free-lessees/any other lodgers;
- to maintain the individual space in good and habitable condition, at their own expense;
- to repair the damage or to bear the repair costs, should the co-owner damage the common parts or the individual property of another co-owner;
- to allow the president/another member of the executive committee/the administrator of the apartment building and a qualified person to enter the individual premises, with a five days prior written notice (or, in case of emergency, 24-hour written notice), should it be necessary to inspect, repair or replace elements of the common property, which can be accessed only from that individual property;
- to modernize and consolidate the condominium, the equipment, facilities, and endowments, if necessary;
- developers of residential real estate are obliged to inform the purchaser/s at the transfer of ownership of the obligation to incorporate an owners' association; they must hand over the technical book of the relevant constructions to the condominium associations, and they should provide the purchaser with the use of utilities' services.

5.3 Liability of Co-Owners

Should any co-owner be in default with respect to their duties established under the applicable law, they might be subject to civil and/or criminal liability (in exceptional situations) in order to cover all damages caused to the other affected owners.

5.4 Rights and Duties of Condominium Associations

As per the applicable law, the rights and duties of the owners' association representatives are the following:

- to adopt a statute establishing the organization, general rules of operation, and attributions of the owners' association, together with an internal building regulation;
- to manage all matters relating to the administration, operation, maintenance, repair, rehabilitation, and/or modernization of the common areas belonging to the building;
- to convene the general meeting of the owners' association at least once a year;
- to annually draft a budget of income and expenses;
- to open a sole bank account through which all the amounts (from tenants and not only) will be collected;
- to raise money for the establishment of a working capital and a repair fund;
- as per the applicable GDPR regulation, the owners' associations should display information on the notice board without disclosing the first and last names of the individuals, and also the individual should be informed about the data processing when surveillance cameras are installed.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

The general legal framework for the lease agreement is the Civil Code, Art. 1.777-1.850. Commercial leases are regulated by Art. 1.777 - 1.824 and 1.828 - 1.831.

The maximum lease term provided by the Civil Code is 49 years. If the parties provisioned a longer period, the lease agreement will be automatically reduced to 49 years. Commercial leases are usually concluded for a period of five up to 10-15 years, depending on the asset type and the leased areas, yet for longer periods than residential leases, which are typically concluded for one or two years.

The law does not require a certain form for the lease agreement, but lease agreements are customarily concluded in writing. Nonetheless, lease agreements with respect to real estate assets belonging to either the public or the private domain of the Romanian state or of the territorial-administrative units must observe a special public tender procedure prior to their execution.

The main clauses in a lease agreement are about parties' rights and obligations, rent, renewal, cases of termination, and penalties for default. It is also customary for tenants to pay a security deposit amounting to up to several months' rent (depending on the type of property) or to grant the landlord a bank guarantee letter in the respective amount.

Landlord's main obligations are:

- to hand over the leased premises in a good and proper condition for use;
- to maintain the leased property in a good condition for use according to its destination for the entire lease term, meaning that the landlord is bound to make all repairs necessary for keeping the destination envisaged by the parties when signing the lease (e.g., maintaining functional elevators, ventilation, etc. in an office building). On the other side, the tenant must usually carry on the so-called small/minor repairs, which result from the normal usage of the real estate;
- to provide for the undisturbed and effective use of the leased premises for the entire lease term;
- to guarantee the tenant against all defects of the leased premises which might hinder, or diminish its use by the tenant, even if the landlord did not know them when the agreement was concluded and irrespective of their existence prior to the execution of the lease or their occurrence afterward. An exception is regulated for visible defects, which the tenant did not claim when the handover of the leased premises took place. However, the landlord is still liable for damages caused to the tenant's life, health, or corporal integrity, even if such damages rest upon visible defects that were not claimed by the tenant when taking over the leased premises;
- to protect the tenant against any third party claiming a right over the real estate.

Tenant's main obligations are:

- to take over the leased premises;
- to timely pay the rent;
- to use the leased premises prudently and diligently, according to the destination established in the agreement and, if no destination was established, according to its nature and previous destination (i.e., it is presumed that an office building was rented for office activity, even if this was not provided in the contract). If the tenant changes the destination of the leased premises and thus causes damages to the landlord, the latter can ask for damages or even for the termination of the lease;
- to inform the landlord immediately about the leased premises' need for important/urgent repairs;
- to execute the small/minor repairs;
- to allow the landlord to examine the leased premises at the agreed periods, or at a reasonable timeframe;

- to return the leased premises at the termination of the lease;
- to pay its share of expenses for the common areas.

As the latest trends in lease agreements in Romania, we can mention heavy negotiation by the parties with respect to the obligations related to obtaining and amending, if the case, the fire safety permit (especially when tenants are performing their own fit-out works).

Additionally, the Force Majeure clauses have gained unprecedented importance in lease agreements since the COVID-19 pandemic, and, additionally, the war in Ukraine, as both landlords and tenants realized the significant impact such clauses can have in their respective contractual relations.

Following the pandemic, most lease agreements were re-balanced through direct negotiation between the parties. Solutions varied from a small number of landlords agreeing to reduce the rent (mostly in conjunction with a prolongation of the lease term), especially in a retail lease agreement, to suspending the lease agreements for a limited time, or providing alterations to the lease premises as to adapt to the new health and safety regulations, or – in some cases –diminishing the leased area.

Although the pandemic no longer has a major impact on lease agreements, its impact on specific contractual clauses can still be seen.

Moreover, due to high rates of vacancy in office premises (considering the work-from-home policies), tenants are obtaining more favorable leases than in the past years.

6.2 Regulation of Leases

The Civil Code regulates the generally applicable set of rules for all leases, irrespective of the type of property: retail, industrial, office, or residential. Nonetheless, specific legal provisions are to be found in the Civil Code for lease agreements related to residential units/dwellings, and for agricultural leasehold agreements (contracte de arendare) having as objects agricultural lands, vineyards, orchards, platforms, and spaces designed for agricultural production or occupied by farms, animals, constructions, machinery, and equipment intended for agricultural use/exploitation.

The general rules for commercial leases were outlined in the previous section. Most of them can be modified and/or excluded by the parties.

Some of the legal rules in commercial leases cannot be contractually excluded, such as the landlord's liability for damages caused to the tenant's life, health, or corporal integrity by unclaimed visible defects of the leased premises, and generally the main obligations of the parties as described in Section 6.1.

6.3 Registration of Leases

According to the Civil Code, it is not mandatory for lease agreements to be registered with the Land register. However, it is mandatory for landlords to pay taxes for the income represented by the rent. To this end, the lease agreement should be registered with the fiscal authorities. However, the registration of agricultural leasehold agreements with the local council is mandatory.

The Civil Code provides specific advantages for the owners who register their lease agreements with the fiscal authorities, as such registered contracts represent writs of execution allowing the landlords: (i) to evacuate the tenant at the expiry of the lease term without a court decision being necessary if the lease has a limited term; (ii) to forcefully execute the tenant for the rent. The above-mentioned advantages of an enforceable title are also conferred by law in the case of a lease agreement authenticated by a public notary.

6.4 Termination of Leases and Renewals

The most common causes of termination of lease agreements are the following:

- expiry of the agreed lease term, unless the lease agreement contains express automatic renewal clauses;
- termination as per the mutual agreement of the parties;
- termination for non-performance, in case one of the parties, does not fulfill its obligations assumed under the lease agreement;
- unilateral termination (without cause), if such right was expressly granted to any of the parties, applicable in case of lease agreements concluded for a specific period of time. Usually, such unilateral termination right is granted in favor of the tenant and consists of a break option that can be exercised by the tenant only once, after a specific period of the lease agreement has elapsed (several break options upon the anniversary of certain time periods may be expressly agreed by the parties, usually no more than two or three such break options in lease agreements concluded for more than 10-15 years);
- unilateral termination (without cause) by either party with prior notice given to the other party, in case of lease agreements concluded for an indefinite period of time;
- de jure termination if the leased premises are fully destroyed or may not be used according to their destination. In case of partial destruction, or a partial impediment in the proper use of the leased premises, the tenant may request either the termination of the lease agreement or a reduction of the rent;
- termination following the annulment or cancellation of

the lessor's title. As an exception, if the tenant acted in good faith (i.e., not knowing about the defect affecting the lessor's title), the lease agreement will continue to produce effects for the term stipulated by the parties, but not longer than one year after the annulment or cancellation of the landlord's title.

The Civil Code provides for a tacit renewal of lease agreements, if, after the expiry of the lease term, the tenant keeps using the leased premises, and continues to fulfill its obligations without any objection from the landlord. In such case, a new lease agreement is deemed to have been concluded in the same conditions as the initial lease agreement, except for its term, which shall be an indefinite one. Landlords are usually keen to expressly exclude the tacit renewal in the lease agreements, and regulate instead that, if the parties choose to prolong the lease agreement upon its expiry, new terms and conditions will be negotiated for the extended term.

Agricultural lease agreements are automatically renewed for the same period as the initial one if neither party informs the respective other party about its renewal refusal. Such refusal notice must be served within six months or one year (in the case of agricultural lands) prior to the expiry of the lease term. The notice periods are reduced to half in case the initial lease agreements were concluded for a lease term of one year or shorter.

At the same time, Romanian law stipulates a right of first refusal for the tenant, in case the lease agreement expires and the landlord wishes to rent again the leased premises, yet only if the tenant fulfilled their obligations under the initial lease agreement. Such right of first refusal can also be contractually excluded, and landlords tend to impose such exclusion in commercial leases.

6.5 Rent Regulations and Rent Reviews

The law does not provide for rent regulations or review clauses, as such clauses may be freely negotiated by the parties.

It is customary for commercial lease agreements to contain a yearly indexation clause, either with a specific percentage or based on objective indexes, such as the Harmonized Index of Consumer Prices.

Also, in the case of retail lease agreements, apart from the base rent, the tenant may also owe a turnover rent, which represents a percentage of the tenant's net income generated in, or from the leased premises, and which shall be due by the tenant only if such turnover rent exceeds the monthly base rent.

6.6 Services To Be Provided Together With the Lease

In cases of commercial lease agreements having as object leased premises located in buildings with more tenants, where the common areas are being maintained and managed by the landlord, in addition to the rent, the tenant shall also pay a service charge covering the expenses incurred in relation to such common areas (e.g., utilities), as well as the cost of the services provided by the landlord to the benefit of all tenants (i.e., cleaning services, security, property taxes, insurance policies, etc.).

Usually, the service charge is either estimated in advance, proportionally to the share of the leased premises applied to the entire building and adjusted each year according to the open book system, or is established in a fixed amount (X EUR/square meters), which is indexed together with the rent.

The cost of the utilities used by the tenant in the leased premises is not included in the rent and is usually paid separately according to the effective consumption of the tenant. Utilities may be either contracted by the landlord and reinvoiced to the tenant based on effective consumption or may be directly negotiated and contracted by the tenant.

6.7 Fit-Out Works and Their Regulation

The initial fit-out works to be performed on the leased premises are divided between the landlord and the tenant. As a standard practice for commercial long-term leases, the landlord performs, on its costs, the initial fit-out works in order to hand over the premises to be used as per the tenant's envisaged destination or it incurs a part of the cost of the fit-out works requested by the tenant.

The tenant's fit-out works are additional arrangements carried out by each tenant/or by the landlord at the request of each tenant and at the tenant's expense, considering the fit-out contribution granted by the landlord (if any).

If the tenant executes works related to the leased premises without the landlord's prior agreement, the landlord can either keep the works without any indemnification towards the tenant or request the tenant to remove such works at its own expense. In both situations, the tenant could be liable for damages for altering the initial form of the leased premises.

From a building tax perspective if, because of the fit-out works, the value of the real estate rises or decreases by more than 25% of the initial value, the owner must fill out a new declaration with the fiscal authority and pay the building tax accordingly.

From a VAT perspective, if during the VAT adjustment period of 20 years the lease agreement ends, the tenant would be liable to perform VAT adjustment for the fit-out works performed at its own cost and handed over free of charge to the

landlord together with the space. This would trigger additional VAT costs for the tenant.

6.8 Transfer of Leases and Leased Assets

As per Romanian law, unless otherwise provided by the lease agreement (i) the tenant may sublease or assign the lease agreement to third parties, and (ii) the landlord may assign its rights under the lease agreement.

In the event of non-payment of the rent due under the lease, the landlord may pursue the subtenant up to the amount of the rent due by the latter to the principal tenant. The anticipated payment of rent by the subtenant to the principal tenant cannot be opposed by the landlord.

If the sublease is forbidden under the lease agreement, this implies that the assignment of the lease agreement is also forbidden. However, the interdiction to assign the lease does not imply the interdiction to sublease.

The transfer of the leased real estate does not lead to the termination of the lease agreement unless the parties expressly agree thereupon.

In case the leased real estate property is being transferred (i.e., sold or otherwise disposed of), the lease agreement is opposable to the acquirer as follows:

- in case the leased real estate property is registered in the Land Register, if the lease agreement was also registered with the Land Register;
- in case the leased real estate property is not registered in the Land Register, only if the lease agreement cumulatively meets two conditions: it bears a certified date (which is granted either by the conclusion of the lease before a public notary or even before a lawyer, or by registration of the lease with the fiscal authorities), and such date is prior to the certified date of the transfer (in case of real estate transfers, the authentication date of the sale purchase agreement by the notary).

In the abovementioned situations, the acquirer shall subrogate all the rights and obligations of the landlord arising from the lease agreement, including in relation to the guarantees provided by the tenant, as per the applicable legal provisions.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

The general legal framework regarding urban planning is Law No. 350/2001 on urban development and land use planning, which establishes the main regulations and plans, as follows:

- the General Urban Plan (PUG)

The PUG is a comprehensive technical document created for the purpose of regulating and guiding the development of a locality. It establishes general guidelines that serve as the foundation for drafting the Zonal Urban Plan (PUZ) for various areas within that locality.

Each administrative-territorial unit is required to update its General Urban Plan at most every 10 years, taking into account the foreseeable changes in social, geographical, economic, and cultural factors, as well as local needs.

- the Zoning Urban Plan (PUZ)

The PUZ represents a technical document drawn up for detailed regulation of the development of a determined area within an administrative unit.

The PUZ is a specific regulatory urban planning tool that coordinates the integrated urban development of certain areas within a locality, characterized by a high degree of complexity or by a pronounced urban dynamic, which ensures the correlation of the integrated urban development programs of the area with the PUG.

The PUZ establishes regulations regarding the building regime, the function of the area, the maximum allowed height, the land use coefficient (CUT), the land occupancy percentage (POT), the setback of buildings from the alignment, and the distances from the lateral and rear boundaries of the plot, as well as the architectural characteristics of the buildings and the permitted materials.

Thus, the PUZ sets forth the rules and conditions under which constructions may be built in a particular area and it can modify the general provisions provided by the PUG for the particular area.

- the Detailed Urban Plan (PUD)

The PUD is a technical document that details the PUG and/or the PUZ and is drawn up for a specific parcel. It represents a specific regulation for a parcel in relation to neighboring parcels.

The PUD may not modify higher-level plans, namely the PUG or the PUZ.

Moreover, the PUG and the PUZ are both accompanied by a local urban planning regulation, which further details their provisions. For example, the PUG identifies areas for which regulations may be laid down that cannot be amended by PUZ or PUD and from which no derogations may be granted. These regulations are clearly formulated in the local urban planning regulation accompanying the PUG.

7.2 Can a Planning/Zoning Decision Be Appealed?

As administrative acts, urban planning, and zoning decisions can be appealed in accordance with the provisions of Law No. 554/2004 on administrative litigation and Law No. 350/2001 on urban development and land use planning. The Supreme Court of Romania stated that the decision of the local council approving a PUZ is a normative administrative act as opposed to an individual administrative act, ending the controversial status of the plan. The distinction has important implications, especially pertaining to the persons or entities who can challenge the zoning decisions.

The above-mentioned decision also clarified the confusion regarding the time limit for challenging a planning/zoning decision, stating that such decisions can be challenged in court within five years of their approval, except for challenges introduced by interested social organizations, in which case the time limit is one year since its approval.

As per the provisions of Law no. 554/2004, the following entities may challenge a planning/zoning decision:

- an aggrieved party, namely any person that considers itself wronged in respect to a right or a legitimate interest (including interested social organizations, such as NGOs, associations, etc.);
- the People's Advocate (Ombudsman);
- the Public Ministry;
- the authority that issued the decision, if the decision in question may not be revoked.

Taking into account the relevant jurisprudence, a planning/zoning decision can be successfully challenged on either procedural grounds (problems of competence or composition of the commission that adopted the act, failure to inform or consult with the citizens concerned) or on substantive law grounds (protection of private property rights, the adoption of the decision amounted to a de facto expropriation of a citizen, but without fair and prior compensation).

As a general rule, the annulment of the planning/zoning decision will only produce effects for the future, having no impact on the building permits already issued. As an exception, the building permit can only be annulled if the litigation concerning its nullity is pending before the court, at the date of the final decision to annul the PUZ.

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1 Real Estate Ownership

1.1 Legal Framework

Ownership is one of the fundamental constitutional rights. Everyone has the right to own property (including real estate) and the property right of all owners has the same content and protection. The property right is an absolute right applying erga omnes, is imprescriptible (i.e., not subject to a statute of limitation, so its judicial enforceability is never lost), and is rarely amended.

Unless prohibited or otherwise limited by various special laws, the same applies to foreigners, who are entitled to acquire and own the real estate property in Slovakia. For example, a specific regime applies in terms of agricultural land, in which case, the non-residents are still nowadays restricted in the acquisition of real estate in certain ways. For illustration purposes, acquiring ownership of agricultural land is restricted to (i) citizens of states, (ii) companies residing in states, or (iii) states and their administrative units, which legal system does not allow Slovak citizens or legal entities to acquire agricultural lands in such state. This reciprocity restriction does not generally apply to EU Member States, the European Economic Area (EEA), and to natural persons with residence or legal persons with registered seats in such states. However, these persons may still acquire ownership by inheritance.

Further restrictions may apply to foreign investment from the perspective of the foreign direct investment (FDI) reviews, which may, under specific cases (in the case of investment into the so-called critical infrastructure) restrict investors from the acquisition of the companies or assets in Slovakia. Though the FDI screening in the case of non-critical infrastructure companies/assets is voluntary (while, for the avoidance of any doubts, the critical infrastructure corresponds to elements of critical infrastructure in the energy, pharmaceutical, metallurgical, or chemical sectors as per Act No. 45/2011 Coll. on Critical Infrastructure), the Slovak government reserves the right to initiate ex post-screening screening proceedings on any foreign investment within two years from completion of the foreign investment (in case of non-critical infrastructure and without time limit in case of critical infrastructure) if there is a reasonable belief that foreign investment had a negative impact when it was completed. FDI may result in significantly altering the transaction (for example allowing the purchase of a smaller portion of shares or a divestment obligation) or even prohibiting it completely.

Specific ownership regime applies to certain assets, such as mineral wealth, caves, underground water, natural medicinal resources, and watercourses, which may only be owned by the state.

Despite its constitutional grounds, ownership may be limited or taken away. There are four cumulative conditions to expropriate a property, which is a forced restriction of the ownership right. The expropriation must be carried out on a legal basis, to the necessary extent, only in the public interest and always for reasonable compensation. Otherwise, there would be a violation of the ownership right.

1.2 Registration of Ownership

In Slovakia, the Real Estate Cadastre (Cadastre) is used for the registration of real estate ownership. The Cadastre is a public register and information system containing the geometric determination and description of all real estate properties in Slovakia and rights to them (such as ownership, pre-emption, mortgages, easements, etc.) and operates under the terms and conditions prescribed under the Act No. 162/1995 Coll. on the Cadastre of Real Estate and on the Registration of Ownership and Other Rights to Real Estate (Cadastre Act).

A person may dispose of a real estate property only subject to registration of such disposal with the Cadastre. In other words, disposals of real estate properties in Slovakia become only effective upon the decision of the competent Cadastre office on the proposed disposal (transfer, encumbering, etc.). There are, however, certain types of rights/liens pertaining to the real estate properties, which are not registered with the Cadastre and are created or established by virtue of law or as a result of a decision of an authority (such as easements or leases).

1.3 Publicity of Real Estate Register

The Cadastre is a public register and the vast majority of the information registered therein is publicly accessible. Ownership deeds, where entries such as the nature of the property, its location, owner, or any third-party rights (easements, mortgages, and alike), are freely accessible online as well as easily traceable based on the cadastral area and the title deed number.

However, the availability of documents, such as agreements, contracts, and court decisions – i.e., the grounds for registration of the property rights, is limited and these documents are only accessible to the owners, parties to a real estate transaction, their authorized representatives or specially authorized persons, as cartographers, within the meaning of special legislation.

Entries in the Cadastre are reliable and binding unless and until proven otherwise. Entries, whose value has been validly questioned must be rectified.

1.4 Protection of Ownership

A person seeking ownership right protection is entitled to apply to the court. If interested in protecting the ownership right through the court, he/she may claim for determination of the ownership by the court. To succeed in such type of proceedings, the claimant must demonstrate a compelling legitimate

interest for the protection of his/her ownership right.

The judicial protection of real estate ownership is not just about determining whether there is a right or not. There are also specific mechanisms to ensure the direct protection of the ownership. For example, in the case of unauthorized occupation of real estate, the owner may seek to have the real estate evicted by a court order.

Trials in Slovakia tend to be long-lasting, which justifies the frequent use of interim measures (in Slovak, neodkladne opatrenie). An interim measure may order a party to do, endure, or refrain from doing something. This legal instrument is used to quickly ensure the protection of real estate ownership if there is an imminent threat to the rights or interests of the owner(s).

If the owner suffers damages in connection with the unauthorized use, they are entitled to compensation to the extent of the actual damages and profit loss (if any). Court proceedings shall be preceded by an attempt to out-of-court settlement and only if failed, the damage shall bring its claim to the court.

As already mentioned in Section 1.1, despite its constitutional grounds, ownership may be limited or taken away. In case of expropriation of real estate by the state, the owner is entitled to adequate compensation to be adhered to by the court in proceedings to rule upon the expropriation itself and the compensation.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

Real estate acquisitions are made either through the transfer of shares in the company to own the real estate property (Share Deal) or through the transfer of assets of the company (Asset Deal), each of them having its own advantages, specifics, and limits.

In both types of deals, conducting due diligence is crucial to assess the risks associated with the acquisition. It usually includes financial, legal, tax, environmental, and operational aspects of the target company and its real estate assets. This process may uncover any potential liabilities or issues that need to be addressed and is necessary when purchasing either the shares or the real estate property.

2.2 Share Deal

The acquisition of real estate through a Share Deal, i.e., indirect real estate acquisition, involves purchasing shares of a company to own the property instead of transferring ownership of the property itself. Share Deals are primarily governed by corporate law principles, meaning the acquisition process must adhere to all legal requirements related to corporate governance, shareholder rights, and the transfer of shares as stipulated by Slovak laws.

Acquirers usually choose Share Deal when they aim to benefit from a going concern and want to continue with the business operation of the acquired company. By way of a Share Deal, the acquirer not only acquires indirectly the real estate, but it also acquires all rights and obligations pertaining to the real estate such as permits, maintenance agreements, or lease relationships. This approach provides the acquirer with the advantage of not only obtaining indirect ownership of the real estate but also "taking over" all related rights and obligations, such as permits, maintenance agreements, or lease relationships. However, when considering the Share Deal, change-of-control clauses, which are commonly used, must be observed.

A share deal is implemented by a purchase agreement, specifically a share purchase agreement, the subject of which is the transfer of shares in a company. In Slovakia, the vast majority of entrepreneurs do their business in the form of a limited liability company (in Slovak, spolocnost s rucenim obmedzenym) or a joint stock company (in Slovak akciova spolocnost). In the case of agricultural lands, the establishment of cooperatives (in Slovak, druzstva) is also common. Under a Share Deal, alongside the acquisition of the shares in question, the acquirer indirectly acquires also the rights and obligations relating to real estate owned by the company acquired.

In the case of a limited liability company, a shareholder may in general transfer their share to another shareholder or a third person by contract subject to the regulation under the founding documents of the company and subject to the company's general meeting approval, if required. A written agreement with notarized signatures of all parties thereto is required for a transfer of an ownership interest in a limited liability company. The transfer needs to be registered in the Commercial Register.

Shares in a joint stock company can have the form of certificated registered shares (physical shares) or book-entered shares. A common form of shares used by the companies is the certificated registered shares. Book-entered shares are typical, particularly with respect to financial or regulated institutions, such as banks.

Shares in a joint stock company are in principle freely transferable, except if, according to the articles of association, their transferability has been limited (but not restricted) subject to the company's approval, in which case, the articles of association must also state the grounds for disapproval by the company with the share transfer. The articles of association may also provide for further/other conditions for share transfer. Failure to meet the prescribed conditions leads to invalidity of the transfer. Also, the transferability of shares in a joint stock company depends on the type of the shares.

In order to transfer the certified registered shares, an endorsement and handover is required. The transfer itself is completed upon the endorsement and hand-over of shares and is not

required to be registered in the Commercial Register, however a change in the shareholder's structure requires to be registered in the Commercial Register, provided that the company has a sole shareholder.

The book-entered shares are transferred by an agreement and registration of the book-entered shares on the owner's account maintained by the central depository of securities of the Slovak Republic. The transfer itself is not required to be registered in the Commercial Register, it is completed upon the registration with the central depository of securities of the Slovak Republic.

2.3 Asset Deal

Acquiring real estate through an Asset Deal involves the direct purchase of the property itself, rather than acquiring shares of a company that owns the property. This approach is mostly used when the acquirer does not intend to acquire the whole company owning the real estate but only wishes to directly purchase the immovable asset(s).

When compared to the Share Deal, due diligence in the case of an Asset Deal may be simpler, focusing only on the inspection of the property, i.e., verifying the title, assessing any existing liens or encumbrances – third-party rights, access to the property, environmental burden and alike, as well as the basic corporate entries and governance of the seller.

A purchase agreement shall include all detailed terms and conditions, with the seller's notarized signature and with all the pages, including annexes, connected together to a single document.

Advantages of an Asset Deal when compared to a Share Deal lay in the acquirer's possibility to pick up only those real estate properties, that the acquirer wishes to buy, which significantly lowers the risk of any hidden liabilities furthermore, the acquirer does not have to acquire the whole company. However, the due diligence still needs to be detailed, so as to avoid undisclosed encumbrances, potential disputes related to the property, or further customary identified flags when inspecting a real estate property.

Furthermore, a specific regime to commercial leases applies in cases, when ownership of a commercially leased real estate property change takes place (briefly, as a general rule, a tenant shall be entitled to terminate its lease agreement as a result of the change of the real estate owner). In addition, even due diligence may not retrieve undisclosed encumbrances or disputes related to the real estate property.

Last, yet importantly and irrespective of the form, in Slovakia, ownership of a real estate property is subject to local tax, payable yearly and the rate varies subject to the location of the real estate property. When speaking of taxes, though there is no asset transfer tax in Slovakia, any gain from the real estate property sale is subject to general income tax in Slovakia, unless the disposal qualifies for income tax exemption; this takes place should the seller own the real estate asset more than five years or if at least five years lapsed since the real estate property has been exempted from its commercial use, if used for commercial purposes by the entrepreneur.

2.4 Disposal Process

The purchase agreement must be executed in written form in order for it to be valid, the signature(s) of the seller(s) must be notarized.

If a sold property is subject to matrimonial community (joint co-ownership) of the property or if the property is subject to co-ownership of multiple co-owners, consent of spouse/other co-owner(s) is required in order to avoid future challenging by spouse/other co-owner(s) of the Asset Deal. In addition, the co-owners have statutory pre-emptive rights, and therefore a sold property (its party) must be at first offered for purchase to all the co-owners only unless the pre-emptive right of the co-owners is affected, the seller may proceed with the Asset Deal to the third-party acquirer.

The transfer of the ownership right to the real estate is effective at the moment of registration in the Cadastre. The application for entry into the Cadastre may be submitted to the relevant cadastral department according to the location of the property in writing or electronically. The standard time limit for registration is up to 30 days and is subject to payment of EUR 100 fee. The accelerated procedure, associated with a higher fee (EUR 300), shall guarantee registration in the Cadastre within 15 days.

2.5 Registration of Change of Ownership

The process of registration is described in Section 2.4.

2.6 Risks To Be Considered

As mentioned earlier, even in the case of an Asset Deal, due diligence shall still be detailed and shall focus on the following risks (a list of which is not exhausted), which are customary dealt with in the course of Asset Deals.

Encumbrances

Easements and liens are in most cases those entries, which are publicly accessible since they are registered with the Cadastre on particular deeds of title. Encumbrances may be created by contract, a public authority decision, or by operation of law. There is a difference between contractual easements and decision-made/statutory-made easements. While the contractual easement has to be registered with the Cadastre in order to become effective, decision-made/statutory-made easements do not have to be registered with the Cadastre. This is the reason

why the due diligence shall be detailed in both forms of real estate property acquisitions in Slovakia.

Pre-Emptive Right

A pre-emptive right takes place if the property is co-owned by multiple co-owners. If any of them decides to transfer part of the property, first they must offer its part for transfer to the remaining co-owners. Only unless any of the co-owners exercises its pre-emptive right, the transferring co-owner may proceed with transfer to a third-party acquirer. This pre-emptive right is designed to give existing owners the opportunity to maintain their ownership structure and prevent unwanted third parties from acquiring any part of the property. The transferring co-owner must offer its part to the remaining co-owners under the same conditions, as expected under the transaction with the third-party acquirer. Unless the pre-emptive right is respected and the part of the property is sold to a third-party acquirer without giving the remaining co-owners the opportunity to purchase it at first, the remaining co-owners are entitled to challenge the transaction at a trial, seeking to have the transaction annulled and to exercise their pre-emptive right.

Acquisition of Ownership from a Non-Owner

When acquiring ownership of real estate, checking the acquisition title of the seller is essential. Under Slovak law, the real estate property cannot be acquired from a now-owner, i.e., if the seller is not a legal owner of the real estate (due to some defects in the original acquisition of the real estate by the seller), it cannot legally sell the real estate property. Therefore, it is necessary to analyze the acquisition titles backward for the period of 10 years plus one proceeding acquisition title (the length of the prescription period plus one more title) so it can be determined whether there are any risks to the ownership right of the seller would be challenged.

Spousal Consent

Please, refer to Section 2.4.

Commercial Leases

Please, refer to Sections 2.4 and 6.1.

Legal Compliance

Real estate properties are subject to various local, state, or national regulations including zone planning, environmental regulations, and building codes. Non-compliance with these regulations can result in legal liabilities, fines, or even restrictions on property use. Also, it is very important to look at the planned construction of utility networks and significant investments, in order to determine whether there is any risk of expropriation.

Restitution Claims

In the past (from 1945 to 1990), owners of the land have been forced to transfer their properties (in particular lands) to the state. Since 1990, the modern state has had the ambition to remedy these unlawful takeovers of the land and allowed former owners of the properties, or their heirs, to claim restitution of their properties to them. Time periods for submission of any restitution claims have already lapsed. However, certain restitution proceedings are still pending, resulting in potentially invalid transfers of the properties nowadays. Investigation of competent authorities is a customary part of real-estate due diligence in Slovakia.

3 Real Estate Financing

3.1 Key Sources of Financing

Real estate financing in Slovakia involves several key sources, each with its specific characteristics. Commercial banks offer various mortgage loans for individuals as well as leveraged financings to developers. It is the most common form of real estate financing. Most banks give a mortgage up to a maximum of 80% of the real estate value in the case of natural persons and customarily up to 60% when speaking of leveraged financings.

Many developers use also investments from smaller private investors by issuing securities and co-financing their investment activities with these funds (such as bonds, crowdfunding, out-of-the-bank financing, etc.). However, the cost of the funds from ordinary investors, compared to bank loans, is usually much higher.

3.2 Protection of Creditors

Irrespective of whether the funds come from the bank or private investors, any lender usually seeks for security to avoid losing its investment, should the borrower fail to repay the borrowed funds. The most used types of security in relation to real estate financing are:

- a mortgage, establishing an in rem right over the real estate property, allowing the mortgagee to reimburse its investment to the project by means of selling the real estate property under the agreed terms, should the borrower fail to comply with the agreed terms of the financing; a mortgage is registered with the Cadastre and is considered to be one of the most secure security types used in the financing;
- a pledge over receivables, which establishes an in rem right over the receivables of the debtor (as a specific rule, a pledge over receivable may be established only if a receivable is freely assignable, or subject to the consent of the third-party creditor with the establishment of a pledge;

- a pledge over shares, which is widely used in real estate financing, and which implicitly forces the shareholders of the developer to be involved and to guarantee the repayment of the funds provided;
- a pledge over bank accounts, which is a sub-group of a pledge over receivables, while it is important to note, that generally, bank accounts receivables are not freely transferable, and therefore this type of security is mainly used within banking financings;
- a notarial deed, which represents a directly enforceable execution title over the debtors' assets without the need to undergo a court trial beforehand.

As the most commonly used type of security, a pledge is established by a written pledge agreement between the pledgee and the pledgee's creditor. Subsequently, the pledge over real estate is registered in the Cadastre and, if the debtor fails to fulfill his obligation, the creditor can enforce its pledge. In the first instance, the creditor should call on the debtor to fulfill the obligation and give him a reasonable period of time. If the debtor fails to fulfill the obligation even within the additional period, the creditor may proceed to enforcement of the pledge, which may include the voluntary sale of the pledge, auction, or other means agreed in the contract.

In case of the debtor's failure to fulfill his obligation, the creditor always has the option to file a lawsuit with the court, which decision is binding and enforceable.

4 Real Estate Taxes

4.1 Transfer Taxes

There are no real estate transfer taxes applicable in Slovakia.

However, if the seller receives income from the sale of the real estate, that exceeds the costs of the seller for the acquisition of the real estate property by the seller in the past, such surplus may be subject to income tax in Slovakia, provided this income is not exempt from tax. Income from the sale of real estate is exempt from tax after a period of five years from the date of its acquisition or from the exclusion from assets used for business if the asset was used for business purposes. The income tax rate varies depending on whether the income is taxed by a natural person or a legal entity and it ranges from 15% to 25%.

The sale of real estate is subject to VAT only in the case that the seller sells real estate during an economic activity, i.e., the sale of real estate is the subject of his business activity. Also, the sale of real estate is subject to VAT if the seller has taken active steps prior to the sale such as those used by business entities – e.g., putting in utilities, using proven marketing steps, etc. The sale of private real estate by a private individual is not subject to VAT.

In this context, it should also be noted that, as of 1 January 2025, a new Act has come into force introducing a transaction tax. This tax would only be applicable if the payment is made cashless from the account of an individual entrepreneur/corporate entity. The tax rate is 0.4% for cashless payments made from a transaction account, regardless of whether the payment is directed to an account in Slovakia or abroad, with a maximum tax amount of EUR 40 per transaction.

4.2 Specific Real Estate Taxes

The real estate tax is the only tax directly related to real estate ownership, while Act No. 582/2004 Coll. on Local Taxes and Local Fee for Municipal Waste and Minor Construction Waste distinguishes between land tax, tax on buildings, and tax on flats and non-residential premises in a residential building. It is a local tax, which means that the administration of the real estate tax is carried out by the relevant municipality. The real estate tax is payable once a year and the owner is obliged to file a tax return by January 31 of the year following the year in which the property was acquired. The rate of tax depends on the type and size of the property and is determined by the municipality in which the real estate is situated. Real estate owned by the municipality, state, churches, public universities, public research institutions, the Slovak Red Cross, etc. are exempt from this form of tax.

5 Condominiums

5.1 Legal Framework for Condominiums

Condominiums (in Slovak, bytove domy) are regulated by Act No. 182/1993 Coll. on the ownership of flats and non-residential premises (Act). According to the Act, condominiums (apartment houses) mean buildings in which more than half of the floor area is intended for housing, the flats and non-residential premises are owned or co-owned by individual owners and there are common parts and common facilities in the proportionate co-ownership of these owners of flats and non-residential premises.

5.2 Rights and Duties of Co-Owners

According to the Act, the owner of a flat or non-residential premises in a condominium has a couple of duties, such as the owner is obliged to maintain its premises in a condition suitable for proper use, not to disturb or endanger others in the exercise of their rights, to remove defects and damage, to allow the entry on request of a representative of the community and alike.

On the other hand, the owner of premises shall be entitled to use its premises, to rent them to another person, the right to inspect documents related to the management of the building or the use of the operation, maintenance, and repair fund and lastly the right and at the same time obligation to participate in

the management of the building and to vote as a co-owner.

5.3 Liability of Co-Owners

In addition to the general obligations of the premises' owners described above, co-owners are specifically required to repair any defects or damage they or their tenants cause to the property. Secondly, co-owners must permit the correction of deficiencies found during safety inspections of the technical equipment. In case of obstructing these corrections, they are responsible for any resulting damage. Furthermore, to ensure compliance with obligations related to the management of the condominium, a lien can be placed on the co-owners unit in favor of the other co-owners. Co-owners are also obliged to pay payments to the fund for operation, maintenance, and repair, and reimbursement for performances. In order to secure claims arising from legal acts concerning the common parts of the house and claims arising from legal acts concerning the flat or non-residential premise made by the owner, a pledge in favor of the other owners is created by law on the flat or non-residential premise in the house.

5.4 Rights and Duties of Condominium Associations

According to the Act, condominium associations have the following rights and duties:

Managing and administering the common areas and facilities of the condominium and decision-making regarding maintenance, repair, and improvements; collecting contributions from co-owners for the costs associated with their responsibilities and creating and managing a fund for repair is another right of association; enforcement of the rules and regulations set out in the condominium's bylaws and imposing penalties for violations. When it comes to legal matters or disputes involving the condominium, the association is the representative acting on its behalf.

The association comes with certain duties, such as maintaining and repairing the common areas and facilities, ensuring their safety and good condition. It also needs to act responsibly, when it comes to managing the condominium's finances, keeping accurate financial records, and providing regular reports to the co-owners. Addressing any deficiencies identified during safety inspections promptly and ensuring compliance with all relevant laws and regulations related to safety, health, and building standards is another duty to be fulfilled. Regular meetings should be held for an association to communicate with the co-owners all the important decisions, upcoming maintenance work, and any changes to the rules. Furthermore, the association has a duty to resolve conflicts among co-owners and between co-owners and the association itself in a fair manner.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

In Slovakia, real estate lease agreements are primarily governed by Act No. 40/1964 Coll., the Civil Code, as amended (Civil Code). Lease and sublease of non-residential premises are specifically regulated by Act. No. 116/1990 Coll. on the Lease and Sublease of Non-Residential Premises (Lease Act), as amended. The Lease Act applies to the lease and sublease of non-residential premises intended for business, commercial activities, administrative purposes, storage, provision of services, etc. Generally speaking, premises that are not used for living but for other purposes are governed by the Lease Act. Other leases of real estate are all governed by the Civil Code. When entering into a lease agreement, it is important to clearly specify the purpose of the lease and proceed according to the relevant regulations. There are some differences when it comes to the lease agreement according to the Civil Code and the Lease Act, for example, a lease agreement concluded under the Lease Act is much more formalistic. For the validity of a lease agreement concluded under the Civil Code, it is sufficient to specify the subject of the lease. For the validity of a lease agreement under the Lease Act, the subject, the purpose, the amount of rent, the due date, the method of rent payment, and the lease term must be specified, If the agreement does not include any of these essential elements, it is absolutely invalid. There are also further specific laws to govern lease of the forest and agricultural lands as well as real estates owned by state, authorities and municipalities.

While under the Civil Code, verbal agreements (including lease agreements) are generally legally valid, in the case of leases, written agreements are strongly recommended for clarity and legal enforceability. On the other hand, according to the Lease Act, the lease agreement must be concluded in writing. Key components of the lease agreement for real estate (irrespective of whether concluded pursuant to the Civil Code or the Lease Act) include identification of the parties, detailed description of the leased property including all relevant specifics, purpose of the lease, term of the lease, rent and payment terms, and rights and obligations of both parties. A lease agreement for a flat is also regulated by the Civil Code and in order for it to be legally valid, it must be concluded in written form. Other key components are similar to the ones listed above.

6.2 Regulation of Leases

Please, refer to Section 6.1.

6.3 Registration of Leases

Registration of a real estate lease is not required in Slovakia.

In cases of leases exceeding the five-year term, registration with the Cadastre is voluntary. Non-registration has no impact

on the validity or effectiveness of the lease agreement or the lease itself. The advantages of registration lie in its publicity, which means any third party will be aware of the lease's existence.

6.4 Termination of Leases and Renewals

Any lease agreement may be either terminated or renewed by the agreement of its parties. Generally, parties to the lease agreement are entitled to deviate from the prescribed means of a lease termination, and even more, they can provide for their own termination reasons.

In commercial leases, it is common to negotiate the prolongation options of the lease, either automatically upon notice from one party or by agreeing on a new amount of rent.

In terms of commercial leases, a lease for a definite time shall be terminated automatically by the lapse of the agreed lease term. The landlord shall be also entitled to terminate a lease for a definite time by notice with a three-month notice period in cases when the tenant uses the premises in breach of the lease agreement and when the tenant is in delay with payment of the rent of more than one month, tenant subleases the premises without the landlord's consent and a couple of further reasons specified in the laws. On the other hand, the tenant shall be entitled to terminate the lease agreement by notice if the tenant is no longer entitled to perform the activities for the purpose for which the tenant had leased the property, the premises are no longer suitable for the lease for other reason than due to tenant's fault or if the landlord flagrantly infringes its duties under the Lease Act.

Compared to the lease agreement concluded for an indefinite time, both the tenant and the landlord shall be entitled to terminate the lease agreement by notice for no cause, unless agreed otherwise between them. When terminating the lease by notice, a written notice must be served and delivered to the other party.

6.5 Rent Regulations and Rent Reviews

Parties have the freedom to set any rental amount they choose when it comes to private contracts. However, leases involving state-owned or municipal properties must adhere to what is known as "market rent." Typically, lease agreements also feature clauses that adjust rent based on inflation indexes from Slovakia or the European Union on a year-to-year basis. Recently, there has been a trend to cap year-to-year changes in rent, however, due to the decreasing inflation, these caps are used less widely nowadays.

6.6 Services To Be Provided Together With the Lease

Real estate leases often include common services, although the specifics can vary based on the type of the property as well as the terms of the agreement. Typically, the common services include the provision of utilities such as water, electricity heating, waste management, etc. There are also service charges, which are usually billed monthly in the form of advance payments and are subject to annual reconciliation. These are standardly billed separately from the rent, as including them in the rent may invalidate the contract. Among other services, we may include maintenance, such as cleaning, and repair of common areas which is usually included in the rent.

The specific services and utilities included with the rent are clearly detailed in the lease agreement and both parties should agree on what is covered by the rent and what is billed separately.

6.7 Fit-Out Works and Their Regulation

If a tenant wishes to customize the leased premises (so-called fit-outs), a couple of legal and tax implications shall be considered.

Typically, any fit-out works will be subject to the landlord's prior consent. Tenants will also have to ensure that the renovations comply with building regulations. Many lease agreements require tenants to return the premises to their original condition upon lease termination. A sanction for changing the property without the landlord's approval is the duty to restore the property to its original state at the tenant's expense.

Under Act no. 222/2004 Coll., on value added tax (VAT Act), if a tenant carries out fit-out works that enhance the value of the leased premises, such improvements are considered non-monetary income for the landlord, assuming the landlord has not reimbursed these costs and has agreed to the works. Provided that the conditions outlined in the VAT Act are met, this income may be subject to depreciation. Typically, parties agree in the lease agreement on the manner of depreciation of the fit-out works or any other improvements of the premises made either by the landlord (if so-agreed in the lease agreement) or by the tenant (subject to the terms and conditions in the lease agreement).

6.8 Transfer of Leases and Leased Assets

A transfer of the leased property has no effect on the validity of a lease agreement, however, if such transfer occurs, the tenant is usually entitled to terminate the agreement with notice. The termination in this situation is due to the change of the landlord.

Generally, the tenant cannot transfer the lease to another party without the landlord's consent. If the landlord consents to the transfer of the lease to another party, the lease agreement remains valid and continues under the new tenant, subject to the agreement between the landlord and the new tenant.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

The use, planning, and zoning restrictions on real estate are regulated through a combination of national and local legislation. The primary legislation is Act No. 50/1976 Coll. on spatial planning and building regulations (Building Act) which regulates the procedures for obtaining building permits, the responsibilities of different authorities, and the requirements for construction projects.

A new Building Act has recently been approved and is set to take effect on 1 April 2025, replacing Building Act. The primary goal of this new law is to simplify and accelerate the construction process while reducing administrative burdens and enhancing transparency. One of its most significant changes is the elimination of the existing two-stage approval process (zoning decision and building permit). Instead, it introduces a single Building Plan Procedure, through which the building authority grants consent for construction activities. At the same time, the responsibility for building law matters continues to fall under the competence of municipalities.

Another important legislation is Act No. 200/2022 Coll. on spatial planning which stipulates that the Office for Spatial Planning and Construction of the Slovak Republic serves as the central state administration body for spatial planning, construction, and expropriation. However, the creation of zoning plans, which define the permitted use of land in different areas such as residential, commercial, industrial, agricultural, and green zones, remains an original competence of municipalities. Municipalities are responsible for developing and approving local zoning plans. These local zoning plans are adapted to local conditions and needs, and all construction work or significant renovation projects are subject to permission from the relevant building authority. The process of obtaining the permission consists of submitting detailed plans and ensuring compliance with the relevant zoning regulations. Then, the building authority specifies in its decision the conditions that must be met during construction.

Compliance with the zoning regulations is enforced through inspections and fines. The building authorities conduct inspections to ensure compliance with building permits and zoning regulations and non-compliance results in fines, mandatory modifications or even demolition of unauthorized buildings.

7.2 Can a Planning/Zoning Decision Be Appealed?

Planning/zoning decisions may be appealed through a process involving administrative review and potentially subsequent judicial review. The general rule applies to the appeal procedure, which means that there is a 15-day time limit for appealing and the appeal is lodged with the authority that issued the decision in question. However, the possibility of appeal is always specified in the decision, which must include a statement of the remedy.

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CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2025

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1 Real Estate Ownership

1.1 Legal Framework

The right to private property is a constitutional right in Slovenia. The key source of law is the Property Code, adopted in 2002. This act is very stable and has so far been amended only twice. It is one of the core acts within the Slovenian legislative environment. Contractual relationships between the parties are regulated by the Code of Obligations, another highly important and stable act within the Slovenian legislative environment.

The Property Code recognizes five rights in rem, i.e., ownership right, lien, easement, right of encumbrance, and the right of superficies (the building right).

As regards specific restrictions for foreigners on the acquisition of RE, please see Section 2.1.

There are clear rules on expropriations in place. The Constitution of the Republic of Slovenia provides that ownership rights to real estate may be revoked or limited in the public interest with the provision of compensation in kind or monetary compensation under conditions established by law. The act regulating expropriations is the Spatial Planning Act which also determines the conditions thereof.

1.2 Registration of Ownership

The rights in rem are registered in the land register, managed by the Slovenian local courts. It is presumed, that the owner of immovable property is the person entered in the land register. The same applies to other rights in rem. One of the main principles of the Slovenian Law of Property Code is the principle of trust in the land register – whoever acts in a fair way during the course of legal transactions and relies on the data, which has been entered in the land register with regards to rights, shall not suffer any damaging consequences.

1.3 Publicity of Real Estate Register

The entries in the land register are public. The land register is accessible online.

1.4 Protection of Ownership

The entries in the register are binding. In accordance with the Slovenian Land Register Act any person who believes that their rights on the immovable property have been infringed by an entry in the land register may, within three years of the day the established land register begins to be used, request, by an action filed against the holder of a registered right, that the court:

- determines the existence of such person's ownership rights, and decides that the registered right is to be deleted and that the right is to be registered for such person's benefit, or

- determines that another right in rem exists on the immovable property for such person's benefit, and decides that the right is to be registered for such person's benefit, or

- determines that there is no other right in rem on the immovable property, on which the ownership rights are registered for such person's benefit, and decides that the challenged right is to be deleted.

The filing of an action shall be noted in the land register.

Such an action is, however, not permissible against persons acting in good faith for whose benefit a right has been registered or preliminarily entered with effect before the moment at which the note in the land register has come into effect.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

RE can be disposed to investors via a share deal, i.e., buying a share in a company that owns the real estate, or as an asset deal, i.e., selling the real estate in question.

In a share deal, the buyer acquires shares in the target. With the acquisition of shareholding, the buyer becomes the owner of the target as a legal entity as a whole including all of the target's assets, rights, claims, and liabilities. Also, all of the target's contracts with third parties with all related rights and obligations as well as approvals, permits, and registrations are automatically acquired. The target's business continues to be performed irrespective of the change of ownership except if there are any specific contractual or statutory provisions requiring obtaining consent in case of a change of ownership.

In an asset deal, the buyer acquires either all or individual assets such as for example real estate, production facilities, machinery, and licenses directly from the target. The business is therefore continued under a new, different legal entity (the buyer or one of its subsidiaries). This option allows the buyer to select the most attractive assets. The approvals, permits, and registrations are typically not transferred and must be reacquired by the buyer.

Share deal leads to the assumption of all the existing claims and liabilities of the target whether known or unknown to the buyer. In principle, by contrast, in an asset deal, there is no such automatic transfer of rights but only in the case of the purchase of individual assets or assets that do not form a business unit. However, if the buyer acquires assets forming a business unit, this also triggers under Slovenian civil law, statutory assumption of joint and several liability by the acquirer (together with the seller) for the obligations related to such transferred assets up to the amount (value) of the transferred assets. Contractual exclusion or limitation of this liability of the acquirer and/or the seller in such transaction is not effective.

As regards the existing contractual obligations, in a share deal, there is no change. Because the buyer only steps into the shoes of the seller, as the owner of the target, the business of the target continues uninterrupted and contracts remain in place (unless individual contractual agreements of the target give the counterparty the right to terminate; i.e., under a change of control clause). In an asset deal, any contracts/business relations among the target and its counterparties to be transferred (as part of the business/assets transfer) will require the consent of a counterparty to such contractual relationship. If the RE is leased to a tenant, the lease agreement is automatically transferred to the new owner of the RE. The seller remains jointly and severally liable together with the buyer for any obligations under such lease agreement (see below under Section 6.1).

In relation to the participation of employees' obligations, in a share deal change of ownership in the target does not trigger rules that give the employees the right to block the transaction, but the employees/worker's council has information/consultation rights. In an asset deal, transfer of business (assets) can require consultations with employees (worker's council), who have the right to stay the execution of asset transfer and to initiate procedures for the settling of the dispute within eight days of receiving information about the anticipated asset deal, if: (i) the workers' council was not acquainted in advance with the intention to transfer the assets, (ii) the information time limits were not complied or (iii) joint consultations on these issues were not requested.

As regards the FDI, the following conditions for FDI notification/clearance are applicable for foreign investors (i.e., a natural person with citizenship outside of the EU or entity with its seat outside the EU; notification obligation applies if there is an entity/person that is considered a foreign investor anywhere in the ownership chain); share deal would be caught by the definition of foreign investment, whereas pure asset deals (sale and transfer of assets) between Slovenian entities are not caught by a definition of foreign investment under Slovenian law, as the notification obligation is triggered with acquiring at least 10% equity or voting rights in a Slovenian company. However, greenfield investments are caught by the definition of foreign investment (e.g., establishing a Slovenian SPV in which a foreign investor shall directly or indirectly hold at least 10% equity or voting rights). In this case, the foreign investor should include the details of the asset deal in its FDI notification.

One of the reasons for acquiring the RE via a share deal is also the possibility of the tenant terminating the lease agreement in case of a change of RE ownership (while respecting the statutory termination deadlines) which would not apply in the case of a share deal. Further, RE in Slovenia by foreign physical persons or legal entities can only be acquired on condition of reciprocity (not applicable for EU physical persons or legal entities, OECD members, EFTA, persons with the status of a Slovene without Slovene citizenship, legal heirs and foreign testamentary heirs who would also be heirs by intestate succession when acquiring title to immovable property by inheritance and foreigners from the former republics of the SFRY who fulfilled all the conditions for registration before December 31, 1990). There are no such limitations in the case of a share deal.

In practice, share deals are more common than asset deals. A share purchase agreement regularly focuses on representations and warranties whereas an asset purchase agreement requires detailed identification of every single asset to be transferred.

2.2 Share Deal

In the relation between the parties, the share is transferred at the time of transfer as agreed between the parties. In the relation between the buyer and the target, under the law, the buyer can exercise its shareholders' rights (vote as a shareholder in assembly, distribute profits, etc.) at the time the share transfer is registered in the court register. The transfer will be registered (retroactively) as of the time the application is filed, however only after the court issues a resolution (much like the process in the land register). The filing for share transfer can be made by the notary as instructed, usually at closing shortly after the transfer deed is signed. The court would normally issue a resolution on the share transfer in 3-7 business days, depending on the workload and time of year (holidays, etc.), but there is no statutory deadline. The resolution becomes final 30 days after it is issued if no party appeals. Waivers do not speed up this process because any entitled third party may appeal and the notary or court will confirm the finality only after the expiry of 30 days from the date of resolution. The buyer may already at closing appoint new managers, change the articles, etc. and the target shall file these changes with the court register together with the transfer of the share, pending the decision of the court on the share transfer.

The share purchase agreement for business shares in a limited liability company (SPA) must be entered into in the form of a notarial deed. The SPA has to be filed with the court register for the transfer of shares and is kept in the court's public records. It is not available online, but in practice, anyone can receive a copy from the register in person. When parties desire to keep the whole SPA confidential the transaction can be structured in a way that a short-form transfer deed (also a notarial deed) is executed at closing to which the full long-form SPA is attached, but not filed with the court register.

Any notarial deed entered into with a foreign party may be executed in English or Slovenian. The document filed with the court must be translated into Slovenian.

The risks in the transaction documentation are usually ad-

dressed with warranties/indemnities.

There are no court fees connected to the share deal. For the costs of the notary, please see Section 2.4.

2.3 Asset Deal

The asset deal is concluded in the form of a written agreement between the seller and the purchaser. Key factors to be considered by the investor are ownership of RE to be purchased, encumbrances of RE (including those not entered in the land register), access to public roads, potential illegality of buildings located on RE, potential contamination of the land, and similar. The risks transferred to the buyer depend on whether or not the liability of the seller is excluded (the "as-is" clause).

The court fees for entering the new owner in the land register depend on the value of the real estate concerned.

2.4 Disposal Process

With the share deal, the share purchase agreement for business shares in a limited liability company (SPA) must be entered into in the form of a notarial deed. The SPA has to be filed with the court register for the transfer of shares and is kept in the court's public records.

With the asset deal, the contract needs to be in written form. It needs to include the so-called "intabulation clause," allowing the purchaser to be entered into the land register as the owner of the real estate. The signature of the seller needs to be notarized by a notary public. The contract may also be concluded in the form of a notarial deed, but this is not mandatory. In case the property tax shall be paid, the seller needs to file an application with the tax authority within 15 days of the conclusion of the agreement. The application needs to be accompanied by the original sale and purchase agreement and proof of ownership if this is not evident from the land registry. If the land is vacant building land, it shall also be accompanied by the location information issued by the municipality and, in the case of the sale of agricultural land, by a final decision of the administrative unit approving the transaction or stating that no approval is required. If there are any pre-emptive rights of the RE to be transferred (e.g., the pre-emptive right of a co-owner of the RE) the application should be accompanied by a waiver of the pre-emptive right. Although not required by law, project documentation is usually handed over to the buyer.

A notary public shall be liable to a client for damages caused by a breach of the duties or powers provided for in the Notarial Act.

For the preparation of notarial deeds, private deeds, and for the payment of other notarial services where the value of the subject matter is known or can be determined, the fee shall be assessed on the value of the subject matter to which the service relates. The basis for the assessment of the fee shall be the turnover value of the object at the time of the conclusion of the transaction, without deduction of debts.

2.5 Registration of Change of Ownership

In a share deal, the filing for share transfer can be made by the notary as instructed, usually at closing shortly after the transfer deed is signed. The court would normally issue a resolution on the share transfer in 3-7 business days, depending on the workload and time of year (holidays, etc.), but there is no statutory deadline. The resolution becomes final 30 days after it is issued if no party appeals. Waivers do not speed up this process because any entitled third party may appeal and the notary or court will confirm the finality only after the expiry of 30 days from the date of resolution.

In an asset deal, the notary files an application for the change of RE ownership with the land register court. The court usually enters the new owner within one month, unless there are other notices of pending actions entered with the real estate that need to be resolved first.

2.6 Risks To Be Considered

Pre-emptive rights need to be considered both in a share and in an asset deal.

With a share deal, in case the shares are co-owned in a limited liability company, co-owners have a pre-emptive right. In an asset deal, co-owners of RE (including in some situations of RE in condominiums, see below under Section 5.1.) also have a pre-emptive right. Pursuant to the Slovenian Code of Obligations, the seller needs to notify the pre-emption beneficiary of the intended sale, i.e. of the buyer and the conditions of sale, and offer the pre-emption beneficiary to buy the share/RE under the same conditions. The pre-emption beneficiary must notify the seller in a reliable manner regarding a decision to exercise the right of pre-emption within thirty days of receiving notification of the intended sale. At the same time as declaring the purchase, the pre-emption beneficiary must pay the purchase money stipulated in the owner's notification of the intended sale or deposit it with the court.

If the seller sells an asset and transfers ownership to a third person without notifying the pre-emption beneficiary and the beneficiary's right of pre-emption was known or could not have remained unknown to the third person, the pre-emption beneficiary may within six months of learning of the sales agreement demand that the agreement be annulled and the asset be sold to the beneficiary under the same conditions. If the seller erroneously notifies the pre-emption beneficiary regarding the conditions of the sale to the third person and this was known or could not have remained unknown to the third person, the six-month deadline shall run from the day the pre-emption beneficiary learned of the true contractual conditions. The entitlement shall in any case terminate five years

after the transfer of the property to the third person.

Pre-emptive right on RE may be determined by the municipality with a decree. Such pre-emptive right may be established on building land, in the settlement development area, in another regulatory area, on agricultural, forest, water, and other land for the construction of public utility infrastructure facilities and facilities used for protection against natural and other disasters and in the long-term settlement development area. Further, the state may determine an area of a pre-emptive right in the area of the state spatial plan (DPN), in the area of regulation on the most appropriate variant, and in the area of the national spatial development plan. The owner of a property in the pre-emption area shall first offer the property to the state or municipality as the holder of the pre-emption right for purchase before selling it. The offer and the conditions of sale contained in the offer are not negotiable between the owner of the property and the state or municipality. The state or the municipality shall declare its acceptance or rejection of the offer in writing within 15 days of receipt of the offer. The statement of rejection shall state the date of receipt of the offer and the price offered. If the state or municipality does not submit a declaration of acceptance of the offer within 15 days of receipt of the offer, the state or municipality shall be deemed not to have accepted the offer. In this case, the owner may sell the property to another person, provided that the price is not lower than that offered to the state or the municipality.

The state or the municipality can also have a pre-emptive right if the sale concerns a monument of national or local importance, respectively. The state further has a pre-emptive right on the land in protected nature conservation areas, on the land on which war graves are located, and on the water land, whereas the municipality is a pre-emption beneficiary on inland waters coastal land.

The special regime further applies in relation to agricultural land and forests. For such transactions, the competent administrative unit needs to issue an approval. In addition, a special regime applies to water and coastal land.

Pre-emptive rights or special regimes related to RE do not apply in a share deal.

3 Real Estate Financing

3.1 Key Sources of Financing

A key source of financing is loans. The loan agreement is regulated by the Slovenian Code of Obligations. There is no special requirement that the loan agreement be in writing unless it is concluded with a customer (physical person). In such cases, it shall be in writing or on other durable media. Financing is also possible by issuing real estate bonds.

3.2 Protection of Creditors

Loans are usually secured with a mortgage. The buyer may also secure the repayment of the loan by pledging other assets or with a fiduciary assignment (assignments of claims as collateral).

4 Real Estate Taxes

4.1 Transfer Taxes

The main tax to be paid is the real estate transfer tax (RETT) which amounts to 2% of the value of the real estate.

VAT is charged on (a) the supply, before the first occupation of a building or parts of a building and of the land on which the building stands and (b) the supply of building land. The supply is subject to VAT at the standard rate (22%). However, a lower rate of VAT applies to the supply of apartments, dwellings, and other buildings intended for permanent habitation, and parts of buildings, where they form part of a social policy. In other cases, and under certain conditions the parties may also opt for VAT. If VAT is charged, the sale is exempt from paying the RETT.

In case the building land is transferred as a going concern, neither VAT nor RETT is payable.

Under certain conditions also capital gains tax shall be paid.

4.2 Specific Real Estate Taxes

The tax to be paid in connection with the ownership of a RE right is the compensation for the use of building land (NUSZ).

5 Condominiums

5.1 Legal Framework for Condominiums

Condominiums exist in Slovenia. It is defined as the ownership of an individual unit of a building and the co-ownership of common parts. An individual unit of a building must represent an independent functional whole that is suitable for independent use, such as a flat, a business premise, or some other independent premises. Other individually apportioned spaces may also belong to individual units of a commonhold if they form part of an immovable property in the co-ownership of commonhold unit owners. Common parts of a building are other parts that are intended for common use by the commonhold unit owners and the land on which the building stands. Other immovable property can also be considered to be common parts.

Co-ownership by all commonhold unit owners over the common parts shall be inseparably linked to ownership over the individual units. Co-ownership over the common parts of a building cannot be waived.

None of the co-owners may request the division of the

co-ownership over the common parts.

A commonhold may only be at the disposal as a whole.

If an immovable property is owned by two or more commonhold unit owners and does not have more than five individual units, the other commonhold unit owners shall have a pre-emption right with regard to the sale of an individual unit of the commonhold.

5.2 Rights and Duties of Co-Owners

Co-owners shall have the right to possess an asset and to use it together with the other co-owners in proportion to their undivided share, without thereby violating the rights of the other co-owners.

Co-owners shall have the right to jointly manage a co-owned asset.

If the subject of the co-ownership is an immovable property, the other co-owners shall have a pre-emption right to buy that property when it comes up for sale. If the pre-emption right is exercised simultaneously by two or more co-owners, they may exercise their pre-emption right in proportion to their respective undivided share.

5.3 Liability of Co-Owners

Please see above.

5.4 Rights and Duties of Condominium Associations

The commonhold unit owners shall conclude a contract on mutual relations. If an immovable property is owned by more than two commonhold unit owners and has more than eight individual units, the commonhold unit owners shall appoint a manager. The appointment of a manager shall be considered a regular management operation. Further, if a building has more than two commonhold unit owners and more than eight individual units, the commonhold unit owners shall set up a reserve fund to cover future regular management costs. The funds of the reserve fund shall be common property of the commonhold unit owners. The funds shall be managed by the manager separately in a special account.

The rights and obligations of commonhold unit owners with regard to the common parts shall be proportionate to their respective co-ownership shares unless otherwise provided by an act or a contract.

As regards the duties of commonhold unit owners, a commonhold unit owner shall ensure repairs to his or her individual unit of the commonhold if this is necessary in order to avert damage to other parts of the building. Further, a commonhold unit owner may carry out alterations to his or her individual unit of the commonhold without the consent of the other commonhold unit owners, provided that such alterations do not entail the deterioration of any other part of the immovable property. Whenever alterations to an individual unit of a commonhold represent a major intervention in the common parts, a commonhold unit owner may not start carrying out the work without the consent of the other commonhold unit owners who have co-ownership shares of the common parts amount that more than one-half.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

Through a lease (rental) contract the lessor undertakes to deliver a specific asset (e.g., RE) to the lessee for use, and the lessee undertakes to pay a specific rent for this. It is regulated in the Slovenian Code of Obligations. In general, during the lease, the lessor needs to maintain the leased property and repair it as required. The lessor shall reimburse the lessee for the costs of maintaining the leased property paid thereby in place of the lessor. Costs for minor repairs caused by the customary use of the leased property and the costs of use itself shall be charged to the lessee. The lessee must notify the lessor regarding necessary repairs.

There is no requirement that the lease agreement is concluded in a written form, however, it is market standard in Slovenia that such agreements are concluded in writing.

The key contents of a RE lease agreement are a description of the leased property, rent (including the costs), term and termination, permitted use, handover and warranties, maintenance and repair, investments and improvements, return of the leased property at termination, liability, landlord's right of access, insurance, and subletting.

Another important aspect of lease agreements is that in case of the sale of the real property subject to the lease, the buyer will step in the shoes of the previous owner and the new owner does not have a right to terminate the lease agreement. The lessee, however, has the right to terminate it, respecting the legal periods of notice of termination.

Furthermore, in case of the sale of the leased property, the transferor shall be jointly and severally liable as a surety for the obligations held by the acquirer deriving from the lease. If the leased property was sold prior to its handover to the lessee, the transferor shall be jointly and severally liable as a surety for the obligations held by the acquirer towards the lessee deriving from the lease.

In Slovenia commercial leases are usually concluded either for an indefinite period of time with a certain notice period for termination for convenience or for a definite, longer period of time (counting in years).

6.2 Regulation of Leases

The legal rules for leases do not differ according to the type of property. The provisions that cannot be excluded, are as follows:

(1) Contractual exclusion or limitation of liability: Liability for material defects in the leased property may be excluded or limited by contract. A contractual provision by which such liability is to be excluded or limited shall be null and void if the lessor knew of the defects and intentionally kept silent if the defect is such that it prevents the use of the leased property, or if the lessor exploited a dominant position and obtained the provision through duress;

(2) Termination: If the leased properties are a health hazard the lessee may terminate the contract without notice, even if this was known when the contract was concluded. The lessee may not waive this right.

6.3 Registration of Leases

There is no requirement to register a lease, however, information on lease transactions in buildings and parts of buildings or premises shall, i.e., be provided by tenants that are legal entities who, in accordance with the rules governing the tax procedure, are deemed to be liable to pay tax in the income tax withholding tax return on income from letting property – when renting from natural persons, landlords who are legal entities or sole entrepreneurs, landlords who are managers of buildings or parts of buildings owned by the Republic of Slovenia and managers of multi-apartment or commercial buildings for parts of buildings co-owned by the owners of parts of buildings in a multi-apartment or commercial building.

The data shall be reported to the Mapping and Surveying Authority of the Republic of Slovenia (GURS).

6.4 Termination of Leases and Renewals

A lease agreement concluded for a definite period of time shall expire with the expiration of the time for which it was concluded. The parties may nevertheless agree to prematurely terminate the lease agreement concluded for a definite period of time. If following the end of the period for which the lease contract was concluded the lessee continues to use the leased property and the lessor does not oppose such, a new lease agreement for an indefinite period shall be deemed to have been concluded with the same terms and conditions as the previous agreement.

A lease agreement concluded for an indefinite period of time terminates for convenience with the notice of termination, respecting the agreed-upon notice period. If no notice period is determined in the lease agreement or by law, the deadline shall be eight days, but the termination notice may not be given at an inappropriate time.

Termination for cause applies in case of breach of obligations arising from the lease agreement. If the breach is, e.g. such that it cannot be cured or in case of material breaches (determined in the lease agreement), the lease agreement can be terminated without a notice period. Otherwise, the breaching party needs to be given the possibility to cure the breach before the agreement is terminated.

Automatic lease renewals are possible and are usually regulated in a way that the lease shall be automatically renewed unless either of the parties notifies the other party of the termination within a certain period prior to the termination of the agreement.

6.5 Rent Regulations and Rent Reviews

N/A

6.6 Services To Be Provided Together With the Lease

The lessor may provide certain services to the lessee, which is usually regulated with a separate agreement. Such arrangements are not common in Slovenia but are not unheard of either.

6.7 Fit-Out Works and Their Regulation

Fit-out works are agreed-upon contractually and can be done either by the tenant (on the basis of the landlord's consent) or by the landlord for the tenant. Usually, the tenant pays the fit-out works. At termination, the parties may agree that the tenant either restores the place to its original condition or leaves the leased property as it is. They can also agree that in the latter case, the landlord pays a certain remuneration for the improvements done to the leased property.

If at termination the tenant leaves the property as it is (i.e., the investments and improvements remain in the premises) and the landlord pays a remuneration, in case the tenant is an enterprise (a company or a sole entrepreneur), this shall be considered as a regular supply of goods. In the case of a natural person, there would be no tax implications.

6.8 Transfer of Leases and Leased Assets

As described above.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

The planning and zoning are regulated by the Spatial Planning Act. The municipal spatial plan determines the purpose of the use of the land (agricultural, building land – construction can only occur on building land), spatial implementation conditions, including any obligation to hold a design competition, settlement areas, areas for the long-term development of settlements, the areas for which the detailed spatial plan shall

be adopted, the redevelopment areas, the public areas and the utilities and other public utility infrastructure and the service areas where connection to and use of each type of public utility infrastructure is or will be provided. With the municipal detailed spatial plan the following shall be determined: urban, architectural, and landscape solutions for spatial planning, a plan of the building plots, the phasing of the implementation of the development, if required, the public utility infrastructure to be provided for the planned spatial development, the conditions relating to its construction, the connection of buildings to it, etc.

The municipal spatial plan is adopted by the municipal council in the proceedings foreseen in the Spatial Planning Act.

7.2 Can a Planning/Zoning Decision Be Appealed?

Administrative disputes against spatial planning acts can be brought before the Administrative Court of the Republic of Slovenia.

An action in an administrative dispute may be brought by:

- a person bringing an action for the protection of their rights and legal interests, if the contested spatial planning implementing act establishes a legal basis for the determination of their rights or obligations and if the person establishes that the contested spatial planning implementing act has, in that part, substantial consequences for them;
- a non-governmental organization with active status in the public interest in the field of spatial planning, environmental protection, nature conservation, or the protection of cultural heritage, if it brings an action for breach of the law to the detriment of the public interest in its field of activity; or
- the Public Prosecution Service, at the request of the government, for the protection of the public interest.

The time limit for bringing an action in an administrative dispute shall be three months from the entry into force of the Spatial Planning Implementing Act.

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1 Real Estate Ownership

1.1 Legal Framework

The key principles of protection of property rights are provided in the Constitution of Ukraine. These include the inviolability of private property rights, ensuring owners cannot be arbitrarily deprived of their possessions. The Constitution further emphasizes the equality of all property rights subjects, guaranteeing all owners the same legal protections, and underscores the state's role in protecting these rights, acting as a safeguard against unlawful interference. In essence, the Constitution guarantees the right to own, use, and dispose of real estate freely.

The Civil Code, Commercial Code, and Land Code of Ukraine all establish a framework for property rights protection. These codes emphasize the owner's freedom to exercise their rights, with only specific, limited restrictions in place. The state generally refrains from interfering in the owner's exercise of these rights. Furthermore, these codes reiterate the principle of equality, ensuring all owners receive the same legal protections.

The rights of real estate owners are generally equal in Ukraine, regardless of whether they are Ukrainian citizens or foreigners. However, there are specific regulations and restrictions that apply to foreign individuals and entities regarding the acquisition of certain types of real estate, particularly agricultural land. In Ukraine, foreigners are prohibited from owning agricultural land. However, they can purchase non-agricultural land, subject to certain legislative restrictions for both individuals and legal entities. Namely, they may purchase land plots within the boundaries of cities and towns for construction purposes. To purchase land outside the boundaries they must own real estate located on such land.

Ukraine has clear rules for the expropriation of ownership during martial law or a state of emergency. The government and local authorities may forcibly expropriate private or municipal property in exceptional circumstances such as natural disasters, epidemics, other emergencies, or due to public necessity.

Expropriation requires a formal act, and the property must be evaluated beforehand. Based on this evaluation, the government provides full compensation in advance. However, during martial law, the government may provide compensation after the expropriation.

It is important to note that the ongoing war has had a substantial impact on the real estate market. According to the updated joint Rapid Damage and Needs Assessment (RDNA3), as of December 3, 2023, over 2 million housing units were damaged, resulting in over USD 55.9 billion in damages. The housing reconstruction needs are estimated at USD 68.6 billion.

Approximately 6 million internally displaced people have moved from the eastern to central and western regions of Ukraine. Their migration has prompted Ukrainian developers to focus on constructing new housing complexes.

To support Ukrainian citizens, the government introduced the eOselya program, which provides affordable housing loans with the possibility of buying housing on a mortgage at 3-7% per year, depending on the category of participants (e.g., defenders of Ukraine, internally displaced persons). The program stipulates that the housing should be commissioned within at most 10 years, or three years in some instances, before the time of the loans. Additionally, a reform of housing policy is upcoming in the form of a new housing law, which should replace the outdated legislation and introduce concepts of affordable housing that align with EU regulations.

The relocation of enterprises to safer regions of Ukraine has also increased interest in various state-supported legal frameworks such as industrial parks and projects with significant investments. This creates a market for companies that can provide the necessary infrastructure for businesses. Private companies operating under such frameworks may enjoy various state incentives, such as exemption from CIT, VAT, and customs duties, as well as reduced land and real estate taxes.

Overall, the Ukrainian real estate market is facing a period of adjustment due to the war. However, there are also opportunities for growth in specific sectors, particularly those that cater to the needs of displaced people and relocated businesses.

1.2 Registration of Ownership

The rights to real estate are registered in the State Register of Property Rights to Real Estate (Real Estate Register), which is maintained by the Ministry of Justice. The registration of rights to real estate and encumbrances is carried out by a state registrar or a notary.

The key regulations on registration of rights to real estate are:

(i) Law of Ukraine "On State Registration of Property Rights to Real Estate and Their Encumbrances" No. 1952-IV dated July 1, 2004; and

(ii) "Procedure of State Registration of Property Rights to Real Estate and their Encumbrances", approved by Resolution of the Cabinet of Ministers of Ukraine No. 1127 dated December 25, 2015.

The following rights to real estate must be registered in the Real Estate Register:

(i) the ownership rights to real estate, including land plots;

(ii) servitude, emphyteusis, superficies, lease rights to land plots and buildings if the lease term is at least three years, other special property rights; and

(iii) encumbrances of real estate such as mortgages.

1.3 Publicity of Real Estate Register

Entries in the Real Estate Register are publicly available, which means that every person can get information about real estate from the Real Estate Register in paper or electronic form.

1.4 Protection of Ownership

The entries in the Real Estate Register in Ukraine are considered binding.

The protection of real estate ownership in Ukraine has seen some improvements despite ongoing challenges. Judicial reforms since late 2017 have led to more unified approaches in applying legislation to property rights cases, which is a positive development.

The Civil Code of Ukraine provides several remedies available to an owner claiming protection of their property rights, including:

(a) Recognition of Ownership Rights

An owner can file a lawsuit to recognize their ownership rights if these rights are disputed or not properly registered. This recognition also obliges others to respect these rights and refrain from actions that could hinder the owner's lawful exercise of their property rights.

(b) Return of Property from Illegal Possession

An owner can file a vindication claim to reclaim their property from someone who possesses it without legal grounds. This applies even if the possessor was a bona fide purchaser.

(c) Removal of Obstacles to the Exercise of Ownership and Disposal of Property

An owner can file a negatory claim to remove any obstacles or restrictions that prevent them from using or disposing of their real estate.

(d) Prohibition of Actions that Violate Property Rights or Taking Certain Actions to Prevent such Violations

Owners can seek court orders prohibiting any actions that violate their property rights, such as unauthorized construction or trespassing.

(e) Compensation

Owners may also seek compensation or damages for any losses incurred due to the unauthorized disposal or use of their real estate. This includes financial losses as well as damages for any harm caused to the property itself.

2 Real Estate Acquisition

2.1 Share Deal or Asset Deal?

Acquisitions through share deals are the more common way to invest in real estate. It is generally faster and usually allows the parties to choose foreign law and opt for arbitration in contractual disputes. Share deals are also more prevalent due to their tax advantages. Additionally, they allow the investors to continue the business as before without any need to re-enter into the agreements related to the real estate, etc.

However, if the investor identifies substantial risks related to the company itself or prefers not to continue business operations as before, selectively acquiring assets rather than purchasing shares in the owner company may be more advantageous. Asset deals provide greater control over the selection and transfer of individual assets, allowing for a strategic acquisition tailored to the investor's objectives, and do not require as comprehensive due diligence as share deals.

The choice between purchasing real estate through a share deal or an asset deal typically depends on the investor's objectives and the existence of any substantial risks identified during due diligence that may affect the decision.

2.2 Share Deal

Share purchases are a popular choice for real estate investment, especially for income-producing properties. Share deals can be faster and more flexible than asset deals, but they are also more complex.

First of all, share deals require more comprehensive due diligence compared to asset deals. During this stage, the parties usually enter into a non-binding agreement, such as a term sheet or letter of intent, to outline the planned transaction and key conditions for both parties (for example, the absence of substantial risks identified as a result of the due diligence).

Once negotiations and due diligence are complete, a binding legal contract like a share purchase agreement (SPA) is signed to formalize the deal. This comprehensive document addresses potential risks by incorporating various clauses, like warranties, conditions precedent, indemnities, etc. SPAs are often governed by foreign law for greater flexibility and to ensure a fair balance between buyer and seller interests. Arbitration clauses specifying dispute resolution outside Ukraine are also common.

If a foreign holding sells shares in a Ukrainian company, the gains are generally subject to a 15% withholding tax (WHT). However, there are exceptions to this rule, such as those provided by certain double-tax treaties with specific countries. Additionally, share deals are not subject to VAT.

2.3 Asset Deal

Asset deals are subject to mandatory terms of Ukrainian law and, thus, are more straightforward in execution than share deals. This fact ensures adherence to local legal norms and procedural requirements, promoting legal certainty and clarity in contractual obligations. It is important to note that due diligence and legal scrutiny are imperative for investors to mitigate different types of risks effectively.

At the same time, the investor should be mindful that Ukrainian law ostensibly grants parties freedom of contract permitting the inclusion of any provisions therein, yet not all provisions may ultimately be deemed lawful. For example, courts usually invalidate liquidated damages clauses, since they are not recognized under Ukrainian law. Typically, the principal remedies available to the buyer involve conditions precedent for mitigating remediable risks and imposing penalties for contractual breaches. There is also a very limited case law on warranties application in asset deals.

The buyer usually pays for the following: registration fees, pension fund duty, notarial fees, the costs of the due diligence investigation, and the buyer's agent's fees.

In an asset deal between legal entities, the seller is subject to an 18% corporate profit tax, while the buyer has to incur a 20% VAT (excluding the sale of residential premises, where only the first sale is subject to VAT) and a 1% pension fund duty.

2.4 Disposal Process

In share deals, notarization is not mandatory; a simple written form is sufficient for the SPA. However, a notary must authenticate signatures on the share transfer acts or similar documents, and changes of shareholders must be registered in the Unified State Register of Legal Entities, Individual Entrepreneurs, and Non-Governmental Organizations.

At the same time, contracts for the sale and purchase of real estate must be in written form and notarized. During the notarization process, the notary verifies not only the title documents and the authority of the individuals signing the contract but also ensures that the transaction complies with legal requirements and reflects the parties' intentions. Typically, the notary fee, including property rights registration, ranges from 1-2% of the real estate's assessed value.

Regarding approvals, it is important to note that consent may be necessary in certain cases. For instance, if the asset is mortgaged, the mortgagor's consent is required for the transaction. The transfer of the title to the real estate must be registered in the Real Estate Register.

While the law does not specify a list of documents that must be transferred with the real estate, it is common practice to include the transfer of necessary technical documentation and copies of utility agreements in the relevant contracts.

2.5 Registration of Change of Ownership

A change of ownership rights is registered by a state registrar (usually a notary). In most cases, the change is done under notary-certified agreements, when the notary registers the changes a few moments after certifying the agreement. The notary also verifies all the submitted documents ensuring compliance with applicable laws.

The registration fee for registering a change varies from approximately USD 7 to approximately USD 370, depending on the registration timing (from five business days to two hours). If the registration is done by the notary, the latter also charges fees for its services. The notary fees are freely negotiated between the notary and the client.

2.6 Risks To Be Considered

Tenants, joint real estate owners, and holders of a subsoil use permit hold a right of first refusal to purchase the real estate. Real estate may also be subject to various encumbrances such as mortgages, liens, tax liens, restrictions on alienation, etc. Special regulatory regimes, such as protection zones or cultural heritage sites, impose additional limitations that must be considered.

Typically, a purchaser can only claim defects in acquired real estate if these defects were latent and could not have been discovered at the time of transfer. However, specific regulations governing this issue vary based on the terms of the contract that was concluded.

3 Real Estate Financing

3.1 Key Sources of Financing

Under current circumstances, most construction projects are financed by the developers themselves. However, large companies often secure funding from local banks or international financial institutions, such as EBRD, by using their assets as collateral through pledges or mortgages.

In the residential market, new constructions are typically financed by selling future real estate assets (e.g., apartments, parking spots, garages) to prospective owners. To protect the interests of buyers in such cases, a new law "On guaranteeing property rights to real estate to be constructed in the future" No. 2518-IX dated August 15, 2022, was adopted. This law introduced various mechanisms and guarantees, including the mandatory state registration of titles to future real estate assets and registration of a guaranteed share in the construction that must be financed by the developer's own funds.

3.2 Protection of Creditors

Standard security measures typically involve mortgages and pledges. In more complex transactions, additional components may be incorporated such as condition precedents in project agreements, and pledges of bank accounts with provisions for automatic withdrawal. Besides, Ukrainian law allows the execution of shareholders agreements with third parties, which is sometimes used as a security.

4 Real Estate Taxes

4.1 Transfer Taxes

Please see to Sections 2.2. and 2.3. regarding taxation of real estate disposal.

4.2 Specific Real Estate Taxes

There are separate taxes on real estate property and land plots in Ukraine.

The land tax is determined by local authorities and, under the general rule, may not exceed 3% of the normative monetary value of the land plot. However, the exact rate depends on whether the normative monetary valuation was conducted, what is the designated use of the land plot, and what is the title to the land plot.

The real estate property tax is also determined by the local authorities. Its rate may not exceed 1.5% of the minimum wage (as of January 1 of the relevant calendar year) per square meter of real estate property. In 2024, this is UAH 35.5 (approximately USD 0.87) per square meter.

5 Condominiums

5.1 Legal Framework for Condominiums

In Ukraine, the common property of a multi-apartment building, including technical premises, attics, basements, and other shared areas, is jointly owned and managed by all owners of the apartments and non-residential premises.

Until recently, the joint ownership of common areas in condominiums was often not formally registered. However, since October 2022, co-owners no longer need to take steps to register ownership of common property, as it is automatically done following the acquisition of apartments or non-residential premises in the building.

The management of these shared spaces typically falls under the responsibility of a management company or condominium association. The land plot beneath the building and the adjacent territory is also considered the common property of the co-owners. If the building is located on a state or municipal land plot, the land may be transferred:

- to a management company or condominium association with the right of permanent use; or
- directly to the co-owners with the right of ownership (free of charge) or permanent use (currently unavailable due to the lack of secondary legislation governing such procedures).

If the land plot is privately owned by the developer, the terms of use are determined by mutual agreement with the co-owners. However, a co-owner's rights to use the land plot cannot be restricted under any circumstances.

5.2 Rights and Duties of Co-Owners

Co-owners in a multi-apartment building can manage common property through either a management company or a condominium association. In a management company setup, co-owners generally have less direct involvement in decision-making, whereas, in a condominium association, they typically enjoy more rights to participate in managing common areas and facilities.

5.3 Liability of Co-Owners

Co-owners in a multi-apartment building may manage common property through either a management company or a condominium association. In a management company setup, co-owners generally have less direct involvement in decision-making. In contrast, within a condominium association, they typically enjoy more rights to participate in managing common areas and facilities.

5.4 Rights and Duties of Condominium Associations

Condominium associations in Ukraine handle the administration of common property, including maintaining payments to be made by the co-owners, managing expenses, contracting with facility management firms, overseeing repairs, leasing out common areas, and pursuing legal actions.

6 Commercial Leases

6.1 Form and Contents of a Lease Agreement

The real estate lease agreement (excluding land plots with separate regulations) must be in writing. If the lease term exceeds three years (or five years for state or municipal property), the agreement must be notarized, and the lease rights must be registered with the Real Estate Register.

If a lease agreement is concluded between two private individuals, it must specify the object of the lease, the rent, and the lease term. The parties are free to set other terms at their discretion.

If one of the parties is a legal entity, the lease agreement must include the following mandatory provisions: (a) the object of the lease (composition and value of the property, including its indexation), (b) the lease term, (c) the lease payment, includ-

ing its indexation, (d) the procedure for applying depreciation deductions, and (e) the procedure for restoring the leased property and the terms of its return or purchase.

In response to the large-scale invasion of Ukraine by the Russian Federation and the associated risks of property damage or loss, lease agreements now frequently include detailed force majeure clauses, clearly defining how such events as war impact lease obligations and the conditions for suspension or termination.

Furthermore, there is an increased focus on comprehensive pre-termination procedures, specifying the conditions under which a lease can be ended early without penalty. Insurance requirements have also become more stringent, mandating coverage for war-related damages to ensure financial protection.

Additionally, mechanisms for adjusting rent in response to significant disruptions or changes in property conditions are becoming more common, allowing for rent reductions or suspensions when necessary.

6.2 Regulation of Leases

The legal rules governing leases vary based on the property's ownership type. State and municipal property leases are subject to stricter regulations according to Law of Ukraine "On Lease of State and Municipal Property" No. 157-IX dated October 3, 2019. In these cases, lease agreements are primarily concluded through electronic auctions and must use a sample form approved by the relevant state or local authority. While this sample form serves as a recommended template, parties can mutually agree on amendments to its provisions.

6.3 Registration of Leases

If the lease term exceeds three years, the lease right must be registered with the Real Estate Register.

6.4 Termination of Leases and Renewals

The lease agreement is automatically terminated by law in the event of the death or liquidation of either party.

Under general rules, the parties to a lease agreement can mutually terminate the lease unless the agreement specifies otherwise. The Civil Code of Ukraine outlines specific grounds for terminating a lease agreement:

1) by the landlord if the tenant:

- fails to pay rent for three consecutive months.
- uses the property in violation of the lease agreement or its intended purpose,
- allows another person to use the property without the landlord's consent,
- neglects the property in a way that poses a risk of damage, or
- fails to undertake required capital repairs when such repairs are the tenant's responsibility.

2) by the tenant if the landlord:

- provides property that does not meet the quality standards specified in the agreement or its intended use, or
- fails to perform necessary capital repairs as required.

These grounds for termination apply whether or not they are explicitly stated in the lease agreement. Additionally, under the"freedom of contract" principle, the parties may include other grounds for terminating the lease agreement beyond those specified by law.

If either party breaches the lease agreement as outlined above, the affected party may request termination of the lease. Should the other party refuse, the affected party can pursue termination through the courts.

The lease agreement will be automatically renewed if the tenant continues to use the property for up to one month after the lease's termination, provided the landlord does not object.

In addition, a tenant who complies with the lease agreement has a pre-emptive right to renew the lease. To exercise this right, the tenant must notify the landlord of their intention before the current lease expires. The landlord may, however, propose changes to the terms of the new lease.

6.5 Rent Regulations and Rent Reviews

The parties involved in the lease agreement determine the rent at their discretion. The lease agreement or applicable laws (specifically for leasing state and municipal property) may allow for periodic review and adjustment (indexation) of the rent.

If circumstances beyond the tenant's control significantly reduce their ability to use the property, the tenant is entitled to request a reduction in rent. Additionally, the tenant may be exempt from paying rent for the period during which they could not use the property due to circumstances beyond their control. In both cases, the tenant is responsible for proving the impossibility of using the property.

6.6 Services To Be Provided Together With the Lease

In practice, landlords commonly handle utility payments (water supply, sewerage, electricity, gas supply) directly, subsequently invoicing tenants for reimbursement. In commercial leases, landlords frequently include supplementary services beyond rent and utilities, charging exploitation (operation) fees. These services typically encompass security, cleaning, maintenance of ventilation and air-conditioning systems, maintenance of common areas, etc.

6.7 Fit-Out Works and Their Regulation

The tenant may only make improvements to the leased property with the landlord's consent. If the landlord grants consent, the tenant is entitled to reimbursement for necessary expenses or may offset these costs against the rent payments.

If the improvements are separable from the property without causing damage, the tenant has the right to remove them.

Should the improvements result in creating a new asset with the landlord's consent, the tenant becomes a co-owner of this new asset. The tenant's ownership share shall correspond to the investments made for improvements unless otherwise stipulated by the lease agreement or law.

If the leased property is used for the tenant's business operations, expenses incurred for fitting out the property (including depreciation) can be deducted from taxable income, contingent upon meeting specific criteria.

6.8 Transfer of Leases and Leased Assets

Under the general rule, the new owner of the leased property automatically assumes the role of landlord. However, the parties to the lease agreement may determine that disposing of the property to another party can terminate the lease agreement.

7 Zoning and Planning

7.1 How Are Use, Planning, and Zoning Restrictions on Real Estate Regulated?

Town planning in Ukraine is regulated by the Law of Ukraine "On Regulation of Town-Planning Activity" No. 3038-VI dated February 17, 2011. The law sets the hierarchy of town planning documentation and regulates the application of each type.

The law requires that acquiring title to municipal or state land plots for construction, changing the land plot's designated use, and obtaining initial data for construction should strictly comply with the town planning documentation covering the respective territory.

Town planning documentation is distinguished based on the territory coverage, namely state (general planning scheme), regional (planning schemes of the regions), and local. The state and regional ones are generally rather broad and do not directly influence the way in which a particular land plot or real estate is used.

There are the following types of local town planning documentation:

(i) a complex plan (covers a territorial community);

(ii) a general plan (covers a town or a village); and

(iii) a detailed plan (details a part of a complex or general plan). A detailed plan is usually developed to enable a particular construction project. It determines the planning, organization, and development of a part of a given territory. It also defines the spatial composition, parameters for construction, and landscape organization of a given territory.

7.2 Can a Planning/Zoning Decision Be Appealed?

Applicable town planning documentation can be challenged in court once its provisions or adoption procedure contradicts the law.

The most common grounds for challenging are procedural violations during public hearings or inconsistencies with the superior town planning documentation.

If the town planning documentation is declared invalid, depending on the project's stage, this may result in:

(i) cancellation of the land plot's transfer into the developer's ownership/use or challenging the change of the land plot's designated use; or

(ii) considering the construction which began on the land plot as a squatter development with subsequent cancellation of the construction permitting documents.

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