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Buying and Selling Real Estate in Romania

ILN REAL ESTATE GROUP



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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER ROMANIAN LAW

I. Types of Real Property Transactions

- A. Purchase of an undeveloped plot of land (agricultural);
- B. Purchase of a buildable plot of land (with or without a building);
- C. Purchase of a building without the land (with superficies right over the land);
- D. Purchase of a flat (condominium);
- E. Purchase of a company having real estate assets.

II. Major Content of the Purchase Agreement

The contract must include: parties' identities, description of the real estate (address, surface area, buildings, cadastral number and Land Book registry number), purchase price (which must be serious – not derisory, real – not fictitious, and determined or determinable), as well as the main obligations of the parties (i.e., to transfer the property rights and to pay the price).

The rest of the contractual provisions are, in principle, freely negotiated between the parties: conditions precedent, transfer date, risk allocation (with certain legal exceptions), guarantees, payment date, etc.

III. Conclusion of the Purchase Agreement

Validity requirements on the form of the purchase agreement. All *in rem* rights over real estate (including ownership) must be transferred through authenticated agreements concluded before a Romanian notary public, under the sanction of absolute nullity of the agreement. The notary public may be chosen by either of the parties. An agreement relating to rights *in rem* over a real estate property located in Romania must be governed by Romanian law.

The persons who sign the agreement before the notary public must have proof of identity (ID Card, Passport, etc.) and, if the case may

be, proof of power of attorney (which must also be authenticated by a notary public and must expressly give power to sell/purchase the specific property). If the buyer/seller is a legal entity, proof of status of the company must also be provided.

The notary shall verify the status of the property and shall obtain an authentication excerpt from the relevant Land Book which shall block any further registrations in the Land Book until the agreement is registered after signing. All the Land Book registrations/de-registrations in respect of the ownership title shall be carried out by the notary public.

The parties will sign only one copy of the agreement which remains in the notary public's archives. The notary shall provide as many duplicates as necessary, which shall be only signed by him/her.

It should be noted that in Romania there are certain pre-emption rights or other statutory (imposed by law) limitations potentially applicable in relation to some specific categories of real estate properties. Examples include pre-emption rights of the State, of the tenants of agricultural land or public service providers (public schools, hospitals), neighbours of forested land, etc. Land near the borders may be sold only with the prior approval of the Ministry of Defence.

IV. Transfer of Ownership

As a general rule, the property right transfers automatically upon the execution of the agreement, unless the parties have otherwise agreed (e.g., until fulfilment of conditions precedent).

The registration in the Land Book is made for opposability purposes only and is to be carried out by the notary public following the execution of the agreement.

Certain rules shall come into effect after the finalization of the cadastral works on all land in Romania. Specifically, once the entire cadastral works for all land in Romania will be finalized (a date which is difficult to estimate at this stage), the registration of the property right transfers with the relevant Land Books shall no longer be performed for opposability purposes only but shall become constitutive of a right (i.e., the transfer will operate as of and on the basis of the registration with the relevant Land Book).

V. Agents

Both parties may use a real estate agent. In general, the agents conclude mainly exclusivity agreements.

The general commission on the market today is approximately 1-3% (depending on the value of the transaction).

VI. Forms of Ownership

In general, Romanian and EU individuals/entities may own land in Romania. While there may be some restrictions for other foreigners to own land in Romania, the practice for foreign investors is to incorporate a Romanian legal entity which has no restriction on owning lands.

The “right of ownership” gives the owner the power to possess, use and dispose of the property.

A. Acquisitions

A real estate deal in Romania may be made either (i) by way of an asset deal (direct acquisition of an asset) or (ii) by way of a share deal (acquisition of the shares in the asset’s holding entity).

Share deals are often preferred to asset deals due to cost and tax optimization purposes, as they are not subject to the fees and costs entailed by an asset deal, as they do not entail the transfer of ownership of the real estate. Nevertheless, such a share deal, if the company holding

the shares is a limited liability company, implies a longer duration of the procedure as there is a 30-day opposition period for any interested person to object to the sale of the shares.

B. Residential Property

The most frequent forms of ownership of residential property are:

1. **Sole ownership:** The owner is the only person authorized to control and dispose of the land in question.
2. **Common ownership:** More than one owner over the property; there are two types:

(a) joint ownership (ownership by two or more persons holding undivided – undetermined – shares over the property – such as ownership by spouses); no deed may be concluded without the consent of the other co-owner.

(b) co-ownership (ownership by two or more persons holding determined shares over the property) which, in turn, can be ordinary co-ownership (e.g., two buyers acquire 50% each of a property) or forced co-ownership (e.g., forced co-ownership of the owners of apartments in a building over the common parts of a building – stairs, lobby, elevator, rooftop, etc.) – deeds may be concluded by each co-owner for its share of the property.

C. Commercial Property

Owners of commercial property are most frequently legal entities. The most commonly used entities under Romanian law are joint-stock companies (SA) and limited liability companies (SRL).

**i. Limited Liability Company – SRL****1. Legal Entity**

SRLs are the most commonly used vehicles.

An SRL is managed by directors who act under the control of the general meeting of shareholders. Shareholders may also be appointed as directors.

No restrictions on citizenship or residency apply for directors or shareholders.

2. Formation

The main steps for the establishment of an SRL are:

- a. Applying for and obtaining reservation of the SRL's trade name,
- b. Choosing a Registered Office,
- c. Drafting and submitting the SRL's constitutive documents to the Trade Registry, and
- d. Subscribing the share capital.

An SRL may be also incorporated by a sole shareholder with some restrictions:

- (i) the shareholder may not be a sole shareholder in another company; and
- (ii) the sole shareholder is not a legal entity which, in turn, has a sole shareholder

Timing: In principle, after all documentation is submitted, incorporation is completed within three (3) business days as of the filing of the registration with the Trade Registry (if no other issues

arise and no additional documents are requested).

3. Costs of Formation

The administrative fees are approximately RON 1200 (approximately EUR 250).

4. Minimum Registered Capital

The minimum share capital is RON 200 (approximately EUR 45).

5. Limited Liability

The shareholders are liable for the obligations of the company up to a limit equal to the amount of their contributions to the company's subscribed capital.

ii. Romanian Joint-Stock Company – SA**1. Legal entity**

The minimum number of shareholders of an SA is two.

An SA is more complex than an SRL. The supreme corporate body is still the general meeting of shareholders as in the case of an SRL.

The management of a joint-stock company is carried out:

- (i) either by a director or a board of directors (one-tiered management) – the board of directors may delegate the management to one or more managers;
- (ii) or by a supervisory board and a management board, (two-tiered management).

The board of directors, as well as the supervisory board, must hold quarterly meetings.

2. Formation

The main steps of the establishment of a joint-stock company are:

- a. Applying for and obtaining reservation of the joint-stock company's trade name,
- b. Choosing a Registered Office,
- c. Drafting and submitting the joint-stock company's constitutive documents to the Trade Registry, and
- d. Subscribing the share capital.

Timing: Once all of the documentation is available, incorporation is completed within three (3) business days as of the filing of the registration with the Trade Registry so long as no issues are identified/additional documentation required.

3. Minimum registered capital

The minimum share capital is RON 90,000 (approximately EUR 20,000).

4. Liability

The shareholders are liable for the obligations of the company up to a limit equal to the amount of their contributions to the company's subscribed capital.

VII. Financing

Financing is typically secured by way of bank loans. In most cases, banks will require securities (collateral) from the borrower.

Securities or collateral may consist of one or more of the following: mortgage of immovable assets (typically, but not necessarily the

real estate which is bought with the loan); mortgage of movable assets (bank accounts, receivables, shares, cars, etc.), assignment of receivables for guarantee purposes or autonomous bank guarantees.

VIII. Payments and Costs. Taxes Involved in Real Estate Transactions

A. Asset deals: Related taxes

The following fees are due in an asset deal involving real estate:

- (i) public notary fees for authenticating the SPA – up to 0.5% of the purchase price,
- (ii) Land Book registration tax – 0.5% of the purchase price.

In practice, usually the purchaser bears all of the fees and taxes of the sale, but the parties may agree to split the costs between them. The seller usually pays the sale tax for sale of immovable property.

VAT shall apply to the purchase price if the land might be buildable (according to the urbanism certificate) or new buildings are being sold (or parts thereof). Standard VAT is 19% but there are special VAT percentages in some cases (e.g., 5% for a natural-person buyer of a property under RON 450,000 – approximately EUR 100,000, provided it is his/her first property). Nevertheless, if both the seller and the buyer are registered for VAT purposes, VAT is not effectively paid as the reverse charge mechanism is applied.

B. Share deals: Related taxes

If the shares are sold at their nominal value, no special taxes shall be imposed. However, if the shares are sold at a price higher than their nominal value, the seller shall pay profit/revenue taxes on the difference between the nominal value and the value of the transaction.

Also, certain fees must be paid to register the transfer of the shares with the Trade Registry (approximately EUR 200).

IX. Examinations Before Closing

The buyer should make the relevant examinations in order to determine any deficiencies in the property right or in the property itself.

Pursuant to Romanian law, a legal conclusion on whether there is a valid title to certain real estate may be given only after examination of the whole chain of transfers in respect of the particular real estate. There is no rule under Romanian law that the last registered owner of the real estate is its true owner/holder. The registered owner is only presumed to own a valid title until proven otherwise by an interested person. If any of the current owner's/holder's predecessors' rights over particular real estate suffer from any defect in title, such defect survives the subsequent right transfer and affects the right of the current owner/holder.

Thus, under Romanian law, if the ownership title over real estate is cancelled, all subsequent acts of the ownership transfers might also be cancelled by Romanian courts, at the request of interested persons.

Cancellation of the subsequent acts may be requested at any time, no statute of limitations is provided by Romanian law in such cases, in consideration of the fact that property right is guaranteed under the Romanian Constitution.

Nevertheless, according to the Land Book Law, if no deficiency arises from the analysis of the

relevant Land Book, a third party may no longer be deregistered after three years from the moment the last owner was registered in the Land Book. This provision is applicable only if the third party is at least the third owner registered for that particular Land Book – i.e., if the Land Book is newly opened, this should not apply, and the third party may be deregistered at any time. Consequently, in practice, as the safeguarding of concluded transactions is preferred, it becomes more difficult to amend the content of the Land Book and implicitly, to challenge the ownership title once the aforementioned conditions are met.

The seller should disclose any relevant hidden defects in the property itself or in the property rights.

If the buyer intends to build on the land, verifications should be made in order to assess the existence of restrictions on building in that area (general, zonal, and detailed urbanism plans). Note that a permit is, in most cases, needed for building, as well as for demolition.

If the acquired land is agricultural, its type may be changed to buildable, in order to be able to actually build on it, by requesting modifications to the zonal urbanism plans – if the land is outside the city limits. If the land is within city limits, modification of the zonal urbanism plans is made automatically when requesting a building permit.

In the light of the aforementioned, it is strongly recommended to undertake a due diligence investigation prior to proceeding with real estate investments in Romania.