



Fall | 24



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Buying and Selling Real Estate in Slovakia

ILN REAL ESTATE GROUP



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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER SLOVAKIAN LAW

I. Types of Real Property Conveyance¹ Transactions

- a) Purchase of an undeveloped plot of land
- b) Purchase of a developed plot of land
- c) Purchase of a building
- d) Purchase of a flat
- e) Purchase of non-residential premises
- f) Establishing a right to build²

Note:

A separate form of acquiring real property (indirectly) is a share deal – acquiring control over the entity (see below) owning the real property through purchase of shares in such entity.

Conveyance of title to real property may also take the form of a donation (see below) or exchange contract (basically a mirrored purchase contract).

II. Formal Requirements

A contract for the transfer of real property (purchase, donation) must be in writing and the expressions of will of the parties must be contained in the same document, i.e. signing in counterparts is not possible.

The signature of the transferor (on a paper-form contract) must be certified by a notary or a Slovak municipality's registry department.

Exceptions apply in cases where (i) the state, a state body, a municipality, etc. is a party to the contract, (ii) the conveyance agreement is drafted in the form of a notarial deed or (iii) the conveyance agreement is drafted by an

attorney-at-law (so called "authorisation").

A transfer contract may also be concluded in electronic form – by means of guaranteed electronic signature which is created by special software and replaces the handwritten signature. Signature certification by notary is not required in such case. For electronic submission, all attachments must be submitted electronically and authorised with qualified electronic signature, in the case of some documents, their conversion into electronic form with preservation of legal effects is also required (it can only be done by an attorney, a notary or the Slovak Post.)

III. Contents and documents

a. Mandatory Content

- Identification of the legal transaction at hand (purchase, donation, etc.), place and time of the legal transaction;
- Identification of the contracting parties;
- Purchase price or manner of its determination;
- Exact description of the real property, i.e., a description of the
 - **land** – details of the cadastral territory, the exact plot number, the land register "C" or "E", the type of land, and the area of the land;
 - **building** – details of the conscription number and the plot number on which the building is erected;
 - **apartment or non-residential premises** – details of the number, floor number, entrance number and co-ownership

¹ Please note that for the purposes hereof, we focus on conveyance of real properties based on a contract (in contrast to other types of real property transfer, such as inheritance or in auction).

² The right to build is a *right in rem* related to a plot of land consisting in a right to have an above ground or underground structure whether yet existing or existing in future. It is not considered as real property *per se* under Slovak law.

shares in common parts and common facilities of the house and on the built-up and adjacent land, the conscription number and the plot number on which the building is erected;

Note: Under Slovak law, the land (*solum*) and the building (*superficies*) constitute two distinct objects of ownership. Thus, the land and the building built upon it may be owned by different persons.

- Where the real property is jointly owned by several owners, the ownership title expressed as a fraction of the total (e.g., 1/2) must be stated;
- Other specific requirements applying on content of a contract for transfer of a flat, such as accession to the facility service agreement.

b. Recommended Content

- Specific payment terms reflecting, e.g., loan, involvement of a bank, etc.;

Note: Deposit of the purchase price at a notary, attorney-at-law or bank (escrow account) and its release after the transfer is effective is commonly used. The parties conclude a separate escrow agreement with the bank, notary or attorney-at-law. According to the escrow agreement the bank/notary/attorney-at-law is obliged to transfer the purchase price upon the fulfilment of the condition precedent(s) for the release of the purchase price detailed in the escrow agreement. These usually include submission of an official extract from the land register evidencing the registration of the

transferee in the land register as the owner of the transferred real property (and additional content, e.g., that the real property is free from any mortgage and/or easement).

- Handover procedure details;
- Liability for defects – from extended liability (compared to statutory standard) to limited liability (excluded defects etc.);
- Declarations, if necessary, regarding the required municipal decisions such as, for instance, the occupancy permit determining the purpose of the use of the real property;
- Detailed representations and warranties regarding the current ownership and substantial characteristics of the real property such as: access to public roads, connectivity to supplies (gas, electricity, etc.);
- Determination of the technical condition of the flat based on expert appraisal with specification of the repairs to be carried out within the next 12 months;

Note: Collateral provisions may be agreed in the conveyance agreement dealing with specific requirements of the parties, such as (i) reservation of the ownership right (e.g., until full payment of the purchase price), (ii) repurchase clause, (iii) pre-emption right, (iv) trial purchase. A detailed description of these institutes exceeds the scope of this overview however they could be useful in some cases. We will gladly provide more detailed information upon request.

c. Required Documents

- Declaration of the facility services provider or the chairman of the community of flats and non-residential premises owners in the building that the transferor does not have any arrears of rent or payments for the services (heating/cooling, electricity, garbage, etc.).
- Energy certification - owner of a building is obliged to keep the energy certification during its validity and to hand it over to the new owner in case of transfer.

IV. Legal Title & Due Diligence

Legal Title

The legal systems that have historically governed the ownership of real property in the territory of the Slovak Republic have resulted in a situation characterized by fractioned ownership of lands and legal uncertainty due to the fact that the same lands can sometimes be concurrently recorded in different registers and still (although in very limited extent now) in the name of different owners.

The records of ownership recorded in the land registry do not represent definitive proof of ownership as these records are considered veracious until proven otherwise.

Thus, a review of the land register is of major importance where ownership status is concerned. In particular, in major transactions a detailed review of title records for the past 10 years is highly recommended.

Due Diligence

In addition, depending on the location and nature of the real property, the seller should conduct a detailed due diligence review focussed on specific issues (as applicable):

- unrestricted right to transfer the real property, pre-emption rights, long-term lease of arable lands, existence of mortgage over the real property;
- specific historical forms of ownership, e.g., “Urbarium” and ramifications on the transaction or intended use;
- (non)existence of unresolved ownership restitution claims raised by entitled persons persecuted by the fascist/communist regimes;
- construction planning aspects/restrictions;

Note: Construction, alteration as well as a change in use or the demolition of a building in most cases require a territorial and (building) permit issued by the local building authorities. The building project has to comply with the local (or zoning, as the case may be) development plans. Therefore, with regard to the prospective plans of construction, the development and land use should be reviewed very carefully before the closing of the contract.

- environmental burdens and issues;
- access to utilities networks;
- public law limitations (civil defence structures, inundation area, etc.);
- sufficient access to the real property (e.g., public road connection).

V. Transfer of Ownership

The transfer of ownership to real property in each case requires initiating a procedure before the local District Office (land registry department) on the basis of paper documents and/or documents in electronic form.

The proceedings for the entry of the ownership right in the land registry are instituted by means of an application filed by any party.

Standard deadline for a decision on entry is 30 days. Accelerated decision within 15 days can be achieved by paying extra fee (triple) or if the transfer concerns strategic investment. If the conveyance agreement is drafted in the form of a notarial deed or by an attorney-at-law the deadline is 20 days.

A frequent instrument used in the conveyance of real property in Slovakia is a “geometrical plan” which is a set of descriptive data and geodetic layouts used for outlining the new boundaries of separated lands or a corridor of a possible easement, etc.

Note: Please be informed that any errors in writing, calculation or other obvious errors can be rectified only through an amendment to the agreement.

The ownership is legally transferred to the transferee upon a decision of the land registry department (as of the date of application for entry in the case of flats).

Recently (between 2014 and 2019), sale of agricultural land was subject to several procedural and material restrictions following from Act on the Acquisition of Ownership of Agricultural Land which were aimed at establishing preferential right of local agricultural operators to acquire the offered land (mandatory public notification of the offered agricultural land, preferential right to acquire). The restrictions placed on the prospective seller of agricultural land as well as on the eligible preferential buyers have been eventually considered contrary to constitutional right to own property (Constitutional Court Decision PL. ÚS 20/2014). Hence, since February 2019 the restrictions no longer apply. Nonetheless, it cannot be excluded that similar, less intrusive regulation is taken in the future.

VI. Forms of Ownership

In general, all individuals and legal entities can invest into and own real property assets. It is irrelevant if the owners and purchasers are resident or non-resident or which country they come from. It is only crucial that they have legal capacity.

The most frequent forms of ownership are:

1. **Sole ownership:** The owner is the only person with ownership right to the real property.
2. **Co-ownership:** More than one person owns an undivided share in the real property. Each co-owner is entitled to dispose with its share. In case of transfer, the other co-owners have pre-emptive right (save for transfers to close persons such as a child, etc.)
3. **Joint ownership of spouses:** Share on the joint property is not expressed (e.g. by percentage or fraction), and a spouse is not entitled to dispose with it independently, i.e. without the consent of the other joint owner (spouse).

Finally, owing to the historical developments, especially agricultural/forest lands are quite often owned or co-owned by so-called “unidentified owners”, i.e. persons who are either not sufficiently identified, deceased or not known at all. The acquisition of such lands

may require tracking down the current successors in ownership (heirs) and/or liaising with the competent authorities (e.g. Slovak Land Fund) that represent such unidentified owners.

VII. Agents

The buyer or seller can both use the services of a real property agent. Currently there are several renowned firms on the market providing services for the intermediation of retail premises and industrial areas.

The agent commission is determined by agreement of the parties without specific limitations (except for general requirement to adherence to good morals).

Caution is recommended when using local agents as the legal-technical quality of the documents used by them is generally not at a level ensuring clear distribution of rights and obligations among the seller, buyer and the agent in case an issue should arise.

VIII. Donations

Real property can be donated by means of a donation agreement. Please note that given the specific nature of the donation, the return of a gift can be demanded only if the beneficiary commits a gross violation of good morals against the donor or the members of their family.

IX. Financing

The usual way of financing real property is a bank loan/mortgage which is mostly connected with insisting on collaterals by the banks.

Typically, the banks do not provide 100% coverage (in any case in the area of mortgages taken by individuals) and a buyer has to pay a certain portion of the purchase price from their own sources (the use of such financial resources is usually a condition precedent to drawing the loan). For large development

projects banks usually require multiple security by establishing a pledge over the real property, shares in the buyer-legal entity as well as a pledge over receivables (both current and future ones).

For special transactions, such as large individual properties or real property portfolios, a common alternative to a bank loan is the use of capital market products, for instance, bonds, receivables or credit derivatives.

X. Costs and Taxes

The costs associated with the registration of the transfer are typically borne by the buyer. However, the seller usually has to bear the costs of deleting of existing mortgages (e.g., securing the seller's debts) from the land register.

There is no real property transfer tax, i.e. specific tax applying on transfers of real property, currently applied in Slovakia. However, the transfer of real property may involve other tax aspects, particularly when a VAT regime applies. Whether a taxpayer's income from the sale of real property is taxable depends on an assessment of the conditions for exemption under the applicable provisions of the legislation.

The real property tax, i.e. tax imposed on owners of the real property, is a local tax the amount of which is determined by the respective local municipality for different types of land and premises. The real property tax is paid for a tax period of a calendar year in advance. The purchaser shall report the acquired real property within 31 January of the following calendar year. The tax is payable upon receipt of the decision of the local municipality containing the calculation of the tax (within 15 days of the decision becoming final).

We strongly advise that tax advisors are

involved in order to ensure that these aspects are dealt with comprehensively, e.g. in view of differing VAT regimes applicable to buildings and lands.

XI. Acquisitions

Real property can be acquired by way of an asset or a share deal. In the case of a share deal, the legal entities used for these purposes are mostly organized as limited liability companies or joint stock companies.

1. Limited Liability Company (in Slovak: "*spoločnosť s ručením obmedzeným*", abbreviation: "*s.r.o.*")

The most widely used legal form owing to its high flexibility, low capital requirement and relatively few obligations.

a) Legal Entity

- A legal entity acts autonomously, represented by executive director(s);
- Independently subject to taxation;
- The particular rights and obligations of an s.r.o. exist autonomously from those of the shareholders and the executive directors;
- The company's statutory body is one or more executive directors. The executive directors act in all matters on behalf of the company in the way of acting that is registered in the Commercial Register. The Foundation Deed (the Memorandum of Association, see below) may state that the executive

directors constitute a collective body. The internal restriction of the executive directors' powers is not effective against a third party, even if published. Under Slovak law, a violation of these duties by an executive director will not (alone) affect the validity of a contract with a third party, but the s.r.o. may hold the executive director in question liable for damages.

b) Formation

- The foundation act is a Memorandum of Association or Foundation Deed in the case of a sole shareholder. It has to be notarized;
- Setting up an s.r.o. is not complicated and can be accomplished easily;
- A supervisory board is not an obligatory company body.

c) Costs of Formation

Typically, the estimated total public fees (signature certification & Commercial Register fee) for the formation of an s.r.o. amount to few hundred euros. The attorney's fees for services rendered in the process of establishing and incorporating an s.r.o. vary depending on the number of shareholders, business authorizations sought and instruments the shareholders wish to put in place, such as a Shareholder Agreement, etc.

d) Minimum Registered Capital

The minimum registered capital required for an s.r.o. is €5,000. In the light of Slovakia's corporate law, it is recommendable to set up a company with capital reflecting the amount of liabilities assumed by the company in order to mitigate the risk that the company could be considered "in crisis" or even insolvent.

Nevertheless, at least 30% of each shareholder's monetary contribution and a half of the total registered capital must be paid-up before the company's registration in the Commercial Register. In the case of a sole shareholder, the registered capital has to be paid-up entirely.

e) Limited Liability

The shareholders of the entity are not personally liable for the company's debts. The shareholders however provide a guarantee for the company's debts up to the extent of their unpaid contribution in the registered capital.

2. Slovak Joint-Stock Company (in Slovak: "*akciová spoločnosť*", abbreviation: "*a.s.*")

a) Legal Entity

- It is a legal entity in which the shareholders are not liable for the debts of the company during its existence;
- It is more complicated to form and operate than an s.r.o. and additional costs arise in connection with

keeping the register of shareholders;

- Hence, the rules for an a.s. are generally less flexible compared to the rules for forming a limited liability company;
- A company can be founded by one founding shareholder – a legal entity; otherwise, there must be two or more individuals or legal entities;
- An a.s. may have the form of a private a.s. or, where its shares (or some of them) have been listed on the stock exchange in any EEA member state, a public a.s.;
- Registered shares may be issued as certified or book-entry securities, whilst bearer shares are issued in book-entry form only;
- Corporate bodies mandatorily include a General Meeting, a Board of Directors and a Supervisory Board;
- A General Meeting consists of all company shareholders and takes place at least once a year. It is positioned as the supreme body holding powers, e.g., in personal matters (electing, remunerating corporate body members) as well as deciding on the distribution of profits and amending the Articles of Association.

b) Formation

The foundation act is either a Foundation Deed or Foundation Agreement in the case the company is established without a call to subscribe shares or the minutes from the constituent General Meeting where the registered capital is subscribed by more shareholders on the basis of a call. All of these documents must include Articles of Association (By-laws) containing mandatory information and must be prepared in the form of a notarial record.

c) Costs of Formation

Typically, the estimated total public fees (signature certification & Commercial Register fee) for the formation of an a.s. amount to few hundred euros (notary fees depend on the amount of the share capital of the company to be established and the number of founders). The attorney's fees for services rendered in the process of establishing and incorporating an a.s. may vary significantly depending on the number of shareholders, method of establishing, etc.

d) Minimum Registered Capital

The minimum registered capital required for an a.s. is €25,000. At least 30% of its subscribed registered capital must be paid up by the time of the submission of the proposal for registration to the Commercial Register.

e) Limited Liability

The shareholders of the entity are not personally liable for the company's debts.

Note: Persons acting on behalf of the company before the company's incorporation in the Commercial Register are liable for the obligations which arise therefrom – these obligations can be assumed by the company within 3 months from its incorporation, and then it is bound by such acts from when it began.

3. Other types of entities

There are three other types of business companies: a Limited partnership company (k.s.), an Unlimited partnership company (v.o.s.), and a Simple joint-stock company (j.s.a.) However, these forms are not very often used as vehicles in real property transactions.

A specific form of entity, a “flat owners’ cooperative” is not unusual in Slovakia. However, it is more a residue from past cooperative ownership of blocks of flats. Only rarely is it used as an investment vehicle for developing blocks of flats today.

This overview is for information purposes only.

Under no account can it be considered as either a legal opinion or advice on how to proceed in particular cases or on how to assess them. If you need any further information on the issues covered by this overview, please contact Mr. Marián Lauko (lauko@peterkapartners.sk).

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