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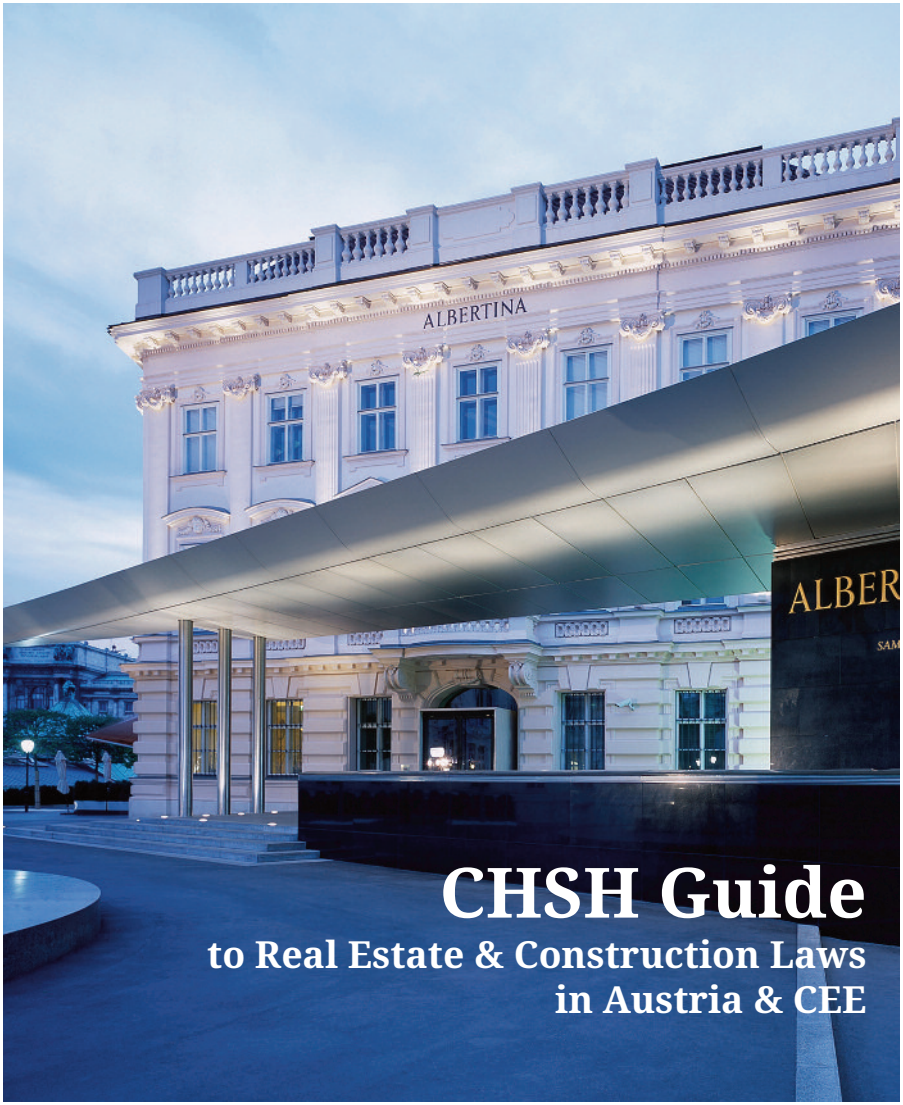

CHSH Guide

to Real Estate & Construction Laws in Austria & CEE

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CONTENT


CHSH Czech Republic
CHSH Austria
CHSH Slovak Republic
CHSH Hungary
CHSH Bulgaria
CHSH Romania
CHSH Belarus
Poland
Warsaw
Belarus
Minsk
Kiev
Ukraine
Czech Rep.
Prague
Slovakia
Vienna
Austria
Bratislava
Budapest
Hungary
Moldova
Slovenia
Croatia
Romania
Bucharest
Belgrade
Serbia
Sarajevo
Kosovo
Sofia
Montenegro
Tirana
Albania
Macedonia
Bulgaria
Black
Istanbul
Greece
Switzerland
Liechtenstein
Luxembourg
Belgium
Germany
Monaco
Corsica
Italy
Rome
Vatican State
Sardinia
Sicily

About this Guide

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

It is of a general nature, does neither purport to be comprehensive, conclusive nor up-to-date and must not be relied upon as giving legal advice. If you would like to receive specific legal advice please speak to your contact at CHSH or the key contacts referred to in this Guide.

All liabilities for damages (direct or indirect) from the information provided are explicitly excluded. It is recommended that parties seek professional legal advice prior to any business transactions involving real property.

About CHSH

CHSH is one of Austria's leading corporate law firms, with an integrated Central and Eastern European practice. With a team of over 180 lawyers, we offer our clients expertise and experience in all areas of real estate and corporate and commercial law in Austria and Central and Eastern Europe.

At CHSH, we have a dedicated team of experienced lawyers specialising in real estate and construction in CEE, all of whom have in-depth expertise coupled with a detailed understanding of the legal and business environments in which our clients operate. The collective experience of our Real Estate & Construction team means we are able to anticipate the needs of our clients and provide the very highest quality legal advice. Each client is served by an integrated team of specialists chosen specifically for the transaction in question.

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

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

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

COVERPAGE

On the frontpage of this Guide you can see a photograph (© Harald Eisenberger) of the Albertina Palais, a famous museum of arts located in Vienna, Austria. The origins of the museum date back to the lifetime of Duke Albert of Sachsen-Teschen, the son-in-law of Maria Theresia. Today, the Albertina houses the Batliner Collection, one of the largest and most important collections of Modern Art, and safeguards one of the most important and extensive assemblages of old master prints and drawings, as well as Austria's most significant Photographic Collection.

CHSH is a proud Sponsor of Albertina museum and regularly hosts events at this wonderful Palais.

Vienna, October 2016


AUSTRIA

REAL ESTATE LAW IN AUSTRIA

The Land Register

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

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

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

ENCUMBRANCES

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

MORTGAGES

A mortgage is a right of lien against a real property. A right of lien is the right granted to the creditor to obtain satisfaction from a specific real property if the debtor does not pay the debt as agreed. If the mortgagor does not fulfil its obligations, the mortgagee has the right to initiate legal enforcement proceedings with the competent court and to use the proceeds to cover any outstanding liabilities. Creditors are prohibited from obtaining ownership of the real property directly on the basis of a mortgage (*lex commissoria*).

The same mortgage can be registered on several land plots without incurring additional registration fees.

EASEMENTS AND LAND CHARGES

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

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

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

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

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

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

Acquisition of Property

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

ASSET DEAL

Under Austrian property law, the proper owner of real property must be registered with the Land Register. Therefore, the ownership of real property is not obtained by signing the purchase contract,

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

SHARE DEAL

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

Purchase of Land by Foreign Nationals

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

Buildings on Third Party Land

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

BUILDING RIGHT *(BAURECHT)*

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

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

SUPERSTRUCTURE *(SUPERÄDIFIKAT)*

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

Lease of Real Estate

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

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

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

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

A specific type of lease agreement is the lease of business operations (*Unternehmenspachtvertrag*), where a going concern is subject to the lease. Basically, leases of business operations are not subject to the Rental Act but depending on the circumstances, the border between a lease of a business operation and a lease of floor space is fluid. In general, the lease of business operations can be assumed if the lessor has an economic interest in an ongoing business undertaken by the lessee also in a wider context (e.g. if it is expressly agreed that a going concern must be handed back over to the lessor after the expiry of the lease term or in case of a shopping center as a business operation on its own providing a certain range of retailers).
With respect to tenancy agreements in shopping centres for instance, industry practice is to conclude leases for business operations while the Austrian courts tend to qualify such lease agreements as leases of floor space, thus granting the lessees protection against termination of the lease without cause under the Rental Act. Nevertheless, this has to be assessed on a case by case basis. The most important consequences of the application of the Rental Act are the landlord's restricted possibilities to terminate the lease agreement and the imposition of detailed requirements in respect of the basic features of the lease agreement (e.g. rent calculations, operating costs, maintenance and repair, term of the lease agreement, etc.).

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

OPERATING COSTS

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

MAINTENANCE AND REPAIR

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

EFFECTS OF A CHANGE OF CONTROL

Lessee

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

Owner

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

Public Permits

In order to realise building projects, building and operational facility permits (*Bau- und Betriebsanlagengenehmigung*) have to be obtained from the respective authorities. In the case of shopping centres, general approval to operate a shopping centre has to be obtained under the Trade Regulation Act (*Gewerbeordnung*) in order to evaluate the impact such a facility might have on the environment. After the facility in general is approved, each shopkeeper has to obtain a special operational facility permit with respect to the operation of his/her business within the shopping center.

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

Taxes and Fees

ACQUISITION OF LAND AND BUILDINGS

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

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

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

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

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

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

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

The registration fee for registering the change of ownership in the Land Register amounts to 1.1% of the value of the land, which does not necessarily need to correspond to the purchase price. This fee only applies in case of an asset deal since the Land Register needs to be updated only in such case.

Transactions regarding the acquisition of real property are exempt from VAT but the parties may opt to add VAT to the purchase price. This is required in particular if the input tax levied on the costs of erection, maintenance and other investments is reduced at a later stage. The VAT rate is 20%.

OWNING LAND

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

ENCUMBRANCES

The registration fee for registering a mortgage in the Land Register amounts to 1.2% of the secured (maximum) amount stated in the mortgage.

LEASE AGREEMENTS

According to the Austrian Stamp Duties Act, certain legal transactions are subject to stamp duty (*Rechtsgeschäftsgebühren*), such as any type of lease agreements. The basis for determination of stamp duty for tenancy or lease agreements is calculated in accordance with the amount of the rent and term of the tenancy relationship. In the case of a fixed term, the stamp duty amounts to 1% of the gross annual rent multiplied by the amount of years up to the maximum of 18 years (for commercial leases) or 3 years (for residential leases). In the case of an indefinite term, the stamp duty amounts to 1% of the threefold of the gross annual rent. In contrast to tenancy agreements, real property purchase agreements do not incur stamp duties.

SALE OF REAL PROPERTY BY PRIVATE INDIVIDUALS

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

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

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

Overview on fees and taxes:

Taxes and Fees	Rate
RETT (real estate transfer tax)	In principle, 3.5% of consideration or real property value, whichever is higher
Registration of ownership	1.1% of value of land
VAT (opting-in)	20% of consideration
Registration of mortgage	1.2% of stated amount
Real Property Tax	2‰ - 1% of the tax value
Stamp Duty for Lease Agreements	1% of the gross annual rent, multiplied by the amount of years up to the maximum of 18 years (for commercial leases) or 3 years (for residential leases); in case of leases with an indefinite term, 1% of the threefold of the gross annual rent

Environmental Liability

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

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

The information contained in this overview represents a condensed overview of certain matters of real property law in Austria, is of a general nature, does neither purport to be comprehensive nor conclusive and does not constitute legal advice. CHSH Cerha Hempel Spiegelfeld Hlawati Partnerschaft von Rechtsanwälten does not assume any liability whatsoever for the correctness or completeness of this overview. It is recommended that parties seek professional legal advice prior to any business transactions involving real property.

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REAL ESTATE LAW IN BELARUS

The Land Register

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

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

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

RESTITUTION

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

the Soviet authorities during the period from 1917 to 1991.

Encumbrances

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

MORTGAGES

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

EASEMENTS (SERVITUDES)

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

Acquisition of property

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

ASSET DEAL

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

SHARE DEAL

An acquisition of property via a share deal leads to "factual" universal succes-

sion, which secures for the acquirer all rights and duties associated with the shares and guarantees a continuity of contracts related to the property. Due to the lack of a new owner of the property, no fees for registration in the Land Register are incurred.

LAND PURCHASE BY FOREIGN NATIONALS

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

Buildings on Third Party Land

In Belarus it is possible (and usual) to erect buildings on a land plot which is not owned by the owner of that building. In particular, the land may be used on the basis of other available rights, e.g. right of permanent use or lease. It is usual to be an owner of a building erected on state-owned land.

As a general rule, the sale of a land plot and a building erected on this land plot must be performed simultaneously if both the land and the building are owned by the same owner. If the owner of the building and the owner of the land plot are different entities/persons, the buyer of the building will obtain the same rights to the land plot as the rights of the seller, e.g. the right of permanent/temporary use or the right of lease. In such event, the relevant rights to the land plot are obtained by the buyer simultaneously upon registration of title to the building.

Lease of Real Estate

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

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

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

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

Public Permits

In order to realise building projects, permits for construction from local authorities must be obtained. Moreover, upon receipt of such permit and approval of design documentation a company should also receive a permit allowing it to carry out the intended work from the Department for Control and Supervision of Construction.

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

Taxes and Fees

LAND TAX

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

The tax rate depends on the type of the land (lands for construction, agricultural lands, lands of the cities, etc.) and may vary from approx. EUR 0.5 per hectare to EUR 180 per hectare or even more.

BUILDING TAX

In addition to land tax, domestic companies should also pay building tax if they own buildings in Belarus. Individuals and foreign companies also pay this tax unless they let the premises under a lease to a domestic company. In the latter case, the lessee is obliged to pay the building tax. The annual tax rate varies from 0.1% (for individuals) to 1% (for companies) of a building's value.

Moreover, with respect to buildings, which were not completed within the term established by the construction permit, the tax rate is 2%. In addition, the

amount of tax rate may be increased up to two and a half times by means of a decision issued by the local authorities. Thus, the maximum amount of tax can be up to 2% for constructed buildings and 5% for buildings under construction for companies. For individuals the tax rate varies from 0.1% to 0.25%.

There is no real estate transfer tax in Belarus. However, VAT at the rate of 20% applies if a company sells real property. At the same time, VAT is not applied if the real property is sold by an individual. In addition, the parties to an agreement (sale/purchase contract, mortgage contract, etc.) have to pay a fee for registration of the relevant agreements and transfer of rights in the Land Register. The amount of the fee depends on the type of registered right or transaction and varies from 0.1 basic value (approx. EUR 1) to 1 basic value (approx. EUR 10) or more.

Overview on fees and taxes:

Taxes and Fees	Rate
RETT (real estate transfer tax)	n/a
Fee for registration of ownership	depends on type and legal basis for ownership and varies from 0.5 basic value (approx. EUR 5) to 1 basic value (approx. EUR 10) or more
VAT	depends on type and legal basis for ownership and varies from 0.5 basic value (approx. EUR 5) to 1 basic value (approx. EUR 10) or more
Fee for registration of mortgage	varies from 0.5 basic value (approx. EUR 5) to 1 basic value (approx. EUR 10) or more
Building Tax	1% - 5% for companies 0.1% - 0.25% for individuals
Land Tax	EUR 0.5 -180 per hectare

Environmental Liability

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

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BULGARIA

REAL ESTATE LAW IN BULGARIA

The Land Register

Real property rights, such as ownership, limited property rights, mortgages, easements and other rights, are registered in the Land Register, which is administered by the Registry Agency. According to the Cadastre and Land Register Act, the Land Register is interconnected with the Cadastre whereby each real property is identified through its unique cadastre number (Identificator). Currently the two registers (property and cadastre) are not fully integrated, since not all of the territory of Bulgaria is covered by the Cadastre yet. The elaboration and approval of cadastre map with respect to huge parts of the country is still in progress, and is expected to be completed several years from now.

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

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

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

RESTITUTION

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

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

Encumbrances

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

MORTGAGES AND PLEDGES

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

EASEMENTS

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

INJUNCTIONS

Injunctions are used as a security of receivables under a court claim or enforcement. Registration of a court claim related to real property rights has a similar function.

Acquisition of property

ASSET DEAL

Any acts transferring ownership rights (such as sale and purchase agreements, exchange, donation, etc.) have to be executed in the form of a notarial deed and

registered in the Land Register. Certain contracts (such as voluntary partition agreements) must be notarized.

SHARE DEAL

By acquiring a company (owner of a real property), the purchaser indirectly acquires its assets. Usually this is more favourable from a tax perspective, since no real estate transfer taxes are incurred. This scheme is appropriate where the respective company (such as an SPV) holds only the target asset and its related contracts.

Property acquisition can also be achieved through some types of corporate transformations (mergers, spin-offs, etc.).

LAND PURCHASE BY FOREIGN NATIONALS AND LEGAL ENTITIES

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

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

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

Buildings on Third Party Land – Limited Property Rights

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

THE RIGHT TO BUILD

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

THE RIGHT OF USE

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

Lease of Real Property

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

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

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

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

Public Permits

Property development is regulated in detail in the Bulgarian Territory Develop-

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

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

Upon completion of the construction works, the investor needs to obtain an operation certificate by registering the entry of the site into exploitation with the chief architect of the respective municipality. Some types of construction sites require a use permit issued by the construction authorities.

Taxes and Fees

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

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

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

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

Overview on fees and taxes:

Taxes and Fees	Rate
RETT (real estate transfer tax)	n/a
registration of ownership	0.1% of consideration or tax value
VAT	20% of consideration
registration of mortgage	0.1% of consideration
Building Tax	1% - 5% for companies 0.1% - 0.25% for individuals
Real Property Tax	0.1‰ - 4.5‰ of the tax value

Environmental Liability

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

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

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REAL ESTATE LAW IN THE CZECH REPUBLIC

General Overview

Czech private law has recently undergone a substantial change by virtue of the New Civil Code and related legislation such as the Business Corporations Act, the Act on Private International Law and the Act on the Land Register. More than one hundred statutes were repealed by this new legislation, which became effective on 1 January 2014 and brought the biggest legal change in twenty years. The aim of this overview is to take a closer look at some of the most significant aspects of the new legislation related to the real property.

The Land Register

There is a principle in Czech law effective since 1 January 2015 under which the real right registered with the Land Register is effective towards all third parties and the lack of such registration does not constitute a defence. The real right registered with the Land Register is deemed to be registered in accordance with its factual legal status. This means that the buyer, acting in good faith on the basis of the information registered with the Land Register, should not generally bear the risk of discrepancies between the registered status and the factual legal status of the real property in question. The advantage for the future may therefore be seen in the fact that buyers of real property theoretically do not need to examine the consistency of the factual legal status and the registered status of the real property by means of comprehensive due diligence.

On the other hand, current owners should verify whether their ownership is properly registered with the Land Register in order to avoid future complications. Current owners are also protected by law since the Land Register is obliged to notify them of any change of registered details related to their real property and it cannot register the change within 20 days of dispatching the notification.

Additionally, a person affected by the change may seek from the Land Register the registration of contentiousness within 30 days of the notification (or three years of the registration if the Land Register failed to notify such person) in order to break the good faith of the (putative) buyer.

Encumbrances

MORTGAGE

The mortgage is concluded by means of a written agreement and becomes effective as of its registration with the Land Register. If the real property in question is not registered with the Land Register, the mortgage agreement must be concluded in the form of a notarial deed. Although the New Civil Code brings with it wider contractual freedom, the following agreements remain prohibited between the contracting parties prior to the maturity of the secured debt: (i) the debtor or the mortgagor must not pay the collateral (such agreement to be prohibited also after the maturity of the secured debt); (ii) the creditor will not enforce the lien; (iii) the creditor is entitled to realize the collateral in an arbitrary manner or he is entitled to retain the collateral for an arbitrary price or a price determined in advance (such agreement being prohibited also after the maturity of the secured debt if the debtor is a consumer or a small-sized or a middle-sized entrepreneur); (iv) the creditor is entitled to take fruits and benefits from the collateral. The mortgage can newly be agreed in respect of a thing that the debtor will acquire in the future.

A positive change may also be seen in the possibility to use the existing registration of a mortgagee, managed by the Land Register, which enables the registration of a lien within the same rank for a different debt upon termination of the lien for a previous debt (*uvolněná zástava*). However, there is no ranking order as per the registration. It depends on the contractual basis or the will of the owner, which is why we conclude it is rather an exemption from the first come, first served basis.

EASEMENTS (PASSIVE AND ACTIVE)

Easements are newly divided into servitudes, consisting of a passive obligation to bear something or to refrain from something, and real burdens, consisting of an active obligation to give something or to perform. The New Civil Code established a rule that enables the owner of two land plots to establish an easement between them. However, this rule only applies to lands. Contracting parties may also agree on types. Contracting parties may also agree on types of servitudes not expressly provided for in the New Civil Code.

ACQUISITION OF REAL PROPERTY

Under Czech law, real property can be acquired either directly or indirectly. Direct acquisition means a direct payment

towards the real property owner. Indirect acquisition is conducted by acquiring the legal entity that owns the subject real property. A completely unique way of acquisition of real property is returning ownership by way of restitution.

ASSET DEAL

Under Czech law, ownership title to real property must be registered in the Land Register. Without registration in the Land Register, the real property would still belong to the previous owner. Therefore, ownership of real property is only obtained as a result of registration in the Land Register. A real property transfer agreement has to be notarized. If a foreign legal entity is involved as a purchaser, its existence and the authorisation of its representatives must be proved in the Czech Republic by a certified extract from the applicable register of companies. In principle, foreign public documents are accepted as evidence, but must as a rule be translated into Czech and verified using a special procedure.

SHARE DEAL

Under Czech law, an acquisition of a company also means a succession of all its rights and duties including ownership title to real property. However, as the actual owner remains the same (the company), there are no additional fees.

LAND PURCHASE BY FOREIGN NATIONALS AND LEGAL ENTITIES

The acquisition of Land by foreign nationals and legal entities is no longer limited, with one exception. This exception applies to agricultural land sold by the state, which can only be acquired either by Czech or EU citizens or by legal entities registered as agricultural entrepreneurs and residing in the Czech Republic or in the EU while having similar status.

RESTITUTION

The publicly known outgoing restitution of the church is rather not a considerable threat to commercial real property transactions as it only applies to state-owned real property. Recently the Czech Republic decided that the compensation will be monetary redemption as opposed to the plot of lands that had been given to the eligible applicants. As of 1 January 2016, restitution will consist of monetary compensation only.

Superficies Solo Cedit

Prior to the effectiveness of the new legislation, Czech civil law, unlike other European countries, allowed separate ownership of a building and the land plot on which it was built. Hence, the acquisition of a building with its land

plot required either two separate transfers from the same owner (i.e. the transfer of a building and the transfer of a land plot) or two separate agreements in the case of two separate owners (i.e. the agreement with the land owner and the agreement with the owner of the building). This inconsistency in ownership made transactions slower and less cost-effective than investors would have liked. Consequently, the removal of separate ownership was highly demanded by both laymen and professionals in the field.

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

Furthermore, there are some exemptions under which ownership remains separated after 1 January 2014 even though the building and the land plot belong to the same owner. Firstly, some buildings, for instance temporary buildings, do not become part of land plots and remain separated real property. Secondly, if the building or the land plot is subject to a real right that excludes unification (for instance lien securing different debts), the building will not become a part of the land plot as long as such real right exists.

Buildings on Third Party Land

The right to build means that a beneficiary is entitled to erect a building on or under the land of another person free of charge or for a consideration. The objective of this real right is to allow the use of land of another person for construction purposes. The right to build itself is deemed to be a real property, it can therefore be transferred, encumbered, acquired by prescription and it is also subject to inheritance. A building suitable for the right to build forms a part of such right to build and is transferred within the transfer of the right to build. However, the right to build is not a part of the land but the beneficiary and the land owner have a statutory pre-emption right towards each other. The right to build is a temporary real right which may be established for the maximum of 99 years and it may be acquired by written agreement, prescription or a

decision of a public authority. It is established upon its registration in the Land Register in the case of the contractual right to build and the statutory right to build. If the right to build expires, the owner of the land must pay half of the market value of the building to the building owner, the day the right to build ceases to exist, unless otherwise agreed between the parties.

Lease of Real Property

BUSINESS LEASE

The subject of the business lease can be any premises or area that is predominantly used for business purposes. It is also possible to let premises or an area that will be constructed in the future. The lease may be registered with the Land Register, which brings a higher level of certainty for the lessee as after a sale of the real property the new owner is only entitled to terminate the lease if it did not reasonably expect that the real property in question is let.

RESIDENTIAL LEASE

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

Considering the possible costs connected with the residential lease, in general, it is possible to stipulate contractually that the tenant is obliged to bear the operating costs. To avoid future disputes, the practice is to evaluate particular segments of the operating costs and subsequently stipulate the obligation of the tenant to pay such amount each month jointly with the rent. To transfer the obligation to pay for maintenance and repair is contractually possible however it is not a custom in the Czech Republic. Provisions of residential lease are generally applicable to business lease as well. Especially for the possibility to contractually transfer the burden to pay the operating costs.

Lease agreements can also be registered in the Land Register; however, as this is a new rule, such a practice has yet to become common practice.

As for the termination of the residential lease, the termination period for the in-

definite lease was extended to six months but it may be shortened to three months if there is good cause for it. A party to whom the termination notice has been served is entitled to object to the notice in writing within one month of the delivery of the notice. Otherwise its right to review the legitimacy of the termination notice will expire.

Public Permits

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

Taxes and Fees

The sale of real property is subject to the real estate transfer tax (RETT) that amounts to 4% of the acquisition value reduced by deductible expenses. By law the seller is liable for payment of the real estate transfer tax. On Novemer 1st 2016 comes into action the amendment of the Legislative Measure of the Senate No. 340/2013 Coll., on Tax acquisition of real estate, which establishes that the payer of the tax is always the buyer. The acquisition value is usually the purchase price agreed by the contracting parties and the new legislation accordingly limits the number of situations in which an expert opinion is required for calculation of the tax base. The sale of real property is generally VAT exempt. The transfer of buildings is only subject to VAT (generally at the rate of 21%) if it is completed within three years of the granting of the first use permit. A transfer of land that qualifies as a building plot within the meaning of the VAT Act is subject to VAT, generally at the rate of 21%.

The ownership of real property is subject to the real property tax. Real property tax differs depending on the ownership of plots of land and buildings registered in the cadastre of the Czech Republic. Tax paid from plots of land has several specifics depending on the kind of land. There are differing tax amounts for building plots and agricultural plots. The tax amount is calculated from the size of the property expressed in square meters multiplied by the average square meter price for land in the area where the plot of land is located and a coefficient, which depends on the population density – the higher the density the higher the coefficient (highest possible coefficient is 5). The tax is paid only for the part of land where no building is erected that means that the payer will not pay the amount twice. A very similar principle applies to the build-up area of the plot of land. Similarly to tax regarding plots of land the law differs

between buildings from the point of use. The tax is significantly higher for buildings that are utilized for business purposes. The tax in both cases is generally paid by the owner, under certain conditions, when the property is owned by the state and rented to a third person, the third person is payer of the tax.

Overview on fees and taxes:

Taxes and Fees	Rate
RETT (real estate transfer tax)	4% of acquisition value
Fee for registration of ownership	CZK 1,000
VAT (opting-in)	21%
Fee for Registration of mortgage	CZK 1,000
Real property tax	Individual, depends on the property type
Stamp duty for lease agreements	CZK 1,000

Environmental Liability

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

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

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REAL ESTATE LAW IN HUNGARY

The Land Register

The land register (*ingatlan-nyilvántartás*) is a system that includes the statutory details of every real property in every locality in Hungary, as well as the rights and other legally relevant information associated with each real property. It also includes the names and personal details of the persons who have their residence in a given real property, and, in the case of legal entities, it indicates the address of the property as their registered address and includes their registered number.

The land register is managed by local organisations known as land offices. A land office will only make entries in the land register on the basis of documents which comply with all the statutory formalities and on the basis of resolutions issued by government agencies or courts.

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

RESTITUTION

As the issue of restitution was regulated in the early 1990s, there is now no considerable threat to real property transactions with respect to restitution claims. Currently, the restitution of real property is regulated by the Hungarian Restitution Act and 104/1991. Govt. Order (VIII. 3.). In order to successfully enforce a restitution claim, the claimant's respective entitlement must be evidenced. Said proof is subject to the fulfilment of strict conditions, which further limits restitution threats.

ENCUMBRANCES

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

MORTGAGES

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

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

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

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

PERSONAL EASEMENTS: USUFRUCT AND USE

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

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

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

LAND-RELATED EASEMENTS

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

PROHIBITION OF SALE AND ENCUMBRANCE

The prohibition of sale and encumbrance (*elidegenítési és terhelési tilalom*) limits ownerships rights, i.e. the owner may not sell or mortgage the relevant property while the prohibition is in place. It is also possible to register only a prohibition of sale, and in that case the property may be encumbered.

Acquisition of ownership

ASSET DEAL

The acquisition of ownership requires the existence of several conditions at the same time.

Usually an agreement on the acquisition of ownership must be concluded (e.g. contract on sale and purchase or donation). The transfer must be recorded in the Land Register; otherwise, with a few exceptions, the transfer will not be deemed to have taken place. Such exceptions include, for example, acquisition on the basis of a regulatory order and cases of usucapio (or acquisitive prescription).

SHARE DEAL

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

SALE OF AGRICULTURAL AND FORESTRY LAND

Under the recently adopted Act on Land (*Földtörvény*), Hungarian nationals and nationals of other EU Member States may acquire agricultural land (*termőföld*) in Hungary; nationals of third

countries and (with some exceptions) legal entities may not.

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

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

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

Buildings on Third Party Land

A land use right (*földhasználati jog*) exists when a piece of land and a building erected on it are not owned by the same person or entity, and the owner of the building has the right to use the land (or a part of it) as long as the building stands. The land may be used to the extent necessary in order to use the building for the intended purpose.

Lease of Real Property

TYPES OF LEASES

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

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

LEASE TERM, TERMINATION

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

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

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

OPERATING COSTS

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

MAINTENANCE AND REPAIR

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

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

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

EFFECTS OF CHANGE OF CONTROL

If the company which is a lessee experiences a change of ownership or control, the lease agreement continues to exist. In case of a change of ownership in real estate, leases are

automatically passed on to the new owner, who is bound by all provisions of the lease unless the Parties agree otherwise.

Public Permits

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

Taxes and Fees

ACQUISITION OF LAND AND BUILDINGS

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

Ownership of real property must be registered in the Land Register, which is subject to a registration fee in the amount of HUF 6,600 (approximately EUR 21). Except for new real properties (i.e. building plots or real properties which have never been occupied before), transactions regarding the acquisition of real property are generally exempt from VAT but the parties may opt to charge VAT on the purchase price. This is required in particular if later on an input tax deduction is made on the costs of erection, maintenance and other investments. The VAT rate is 27%.

OWNING LAND

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

ENCUMBRANCES

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

SALE OF PROPERTY BY PRIVATE INDIVIDUALS

If the seller of a real property is a private individual, the sale is subject to personal income tax (at a rate of 15%).

Overview on fees and taxes:

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

Environmental Liability

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

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

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ROMA
NIA

REAL ESTATE LAW IN ROMANIA

The Land Register

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

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

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

Encumbrances

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

MORTGAGES

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

the real property and being registered as such in the Land Register.

EASEMENTS AND LAND CHARGES

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

Property easements grant the respective owner of the "dominant" property certain rights over the "servient" property. A typical example of an easement is the right to cross the servient property in order to access the dominant property (right of way).

The NCC organizes easements into apparent or unapparent, continuous or non- continuous and positive or negative easements.

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

Acquisition of property

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

SHARE DEAL

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

ASSET DEAL

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

LAND PURCHASE BY FOREIGN NATIONALS

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

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

Buildings on Third Party Land

Following the principle superficies solo cedit, the owner of a land plot is also the owner of the building erected thereon.

SUPERSTRUCTURE (SUPERFICIE)

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

Lease of Real Property

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

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

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

The lease of agricultural goods is treated as a specific type of lease agreement, with particular rules and applies only to

the agricultural sector. This type of contract is mainly used to lease land and buildings such as farms, silos, storage facilities, exploitation roads, plantations, platforms and such. Animals and machinery can also be leased based on this type of contract.
In addition to the standard lease contract, the lease of agricultural goods has the following particularities:
(i) it must be registered with the local administrative authority (City Hall);
(ii) the registered agricultural lease contract constitutes an enforceable title.

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

a) a term of one year with respect to unfurnished houses or space for the exercise of a professional activity; or
b) for the corresponding term for which the rent was calculated, in case of movable property or in case of furnished rooms or apartments; or
c) for the duration of the lease of the immovable, in case of movable goods made available to the lessee for the use of a building.

With regard to the agricultural lease contract, in case the parties do not indicate the period or it is concluded over an indefinite period, it is considered that the agricultural lease contract was concluded for the time necessary for harvesting the fruits that the agricultural goods will produce in the agricultural year in which the contract was concluded.
Land lease agreements registered with the fiscal authorities (for natural persons) or notarized (for natural persons and juridical persons) constitute enforceable titles with regard to the due rent and penalties.

OPERATING COSTS

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

MAINTENANCE AND REPAIR

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

EFFECTS OF CHANGE OF CONTROL

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

Public Permits

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

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

Taxes and Fees

ACQUISITION OF LAND AND BUILDINGS

The acquisition of real property in Romania is subject to registration fees, tax on real estate transactions and VAT.

Transaction and registration fees are composed mainly of land register fees for obtaining the initial Land Register excerpts (EUR 9/parcel), notary fee (0.5 - 1% from the transaction value), land register fees for the registration of the ownership right in the Land Register (0.15% of the contract value for natural persons and religious cults and 0.5% of the contract value for legal entities).

INCOME REAL ESTATE TAX

For the seller, the asset deal implies the payment of the tax on real estate transactions, between 1% and 3% from the amount of the contract value.

The income tax on real property transactions is calculated as follows:

- for immovable assets acquired in a time frame under 3 years (inclusive) before the sale:
  (i) 3% from the contract value up to RON 200.000;
  (ii) over RON 200.000, 6.000 lei + 2% at the value exceeding RON 200.000;
- for immovable assets acquired in a time frame over 3 years:
  (i) 2% from the contract value up to RON 200.000;
  (ii) over RON 200.000, RON 4.000 + 1% calculated from the value exceeding RON 200.000

VAT

20% VAT will apply to the value of the immovable if the seller is registered with VAT purposes in Romania, unless the Seller is:

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

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

- homes for the elderly and retired;
- orphanages and recovery and rehabilitation centres for children with disabilities;
- housings with a usable area under 120 sqm, excluding annexes, with a under RON 450,000 (net), acquired by any unmarried person or family.

Exemption from VAT applies to the sale of:

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

The exemption does not apply to:

- new constructions and parts of new constructions (New buildings are any constructions transformed so that its structure, nature or destination are modified or, in the absence of these modifications, when the cost of such transformations, except the value-added tax, is exceeding 50% of the market price of the respective building, exclusive the value of the land, after the transformation); However, for such constructions reverse charge is applied.
- building land/parcels; However, for such parcels, reverse charge is applied.

SHARE DEAL

In case of a share deal where the subject company is the owner of the real property in Romania, which represents more than 50% of its entire assets (directly or via further participations), income tax of 16% from the capital gain of the transaction applies. The acquirer has the obligation to calculate, retain (from the purchase price) and transfer the tax at the closing of the transaction.

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

VAT does not apply to the transfer of shares.

OWNING LAND

Building tax

Building tax is payable on an annual

basis and is calculated by applying tax rates on the taxable value of buildings. In case of a legal entity, the building tax is calculated based on the book value of the building respectively the purchase price of the building. This value can be:

- acquisition cost for buildings purchased;
- production cost for buildings built;
- value resulting from the revaluation report for the buildings revalued under a statutory provision;
- Legal entities are subject to a local building tax rate established by local councils in a range of 0.25% - 1.5%. The tax is applied to the taxable value of the building; the tax rate may be considerably increased by the local authorities if the buildings belonging to legal entity are not periodically valued by a professional appraiser. If a building has not been revaluated, the tax rate is set as follows:
  - 5% for buildings not valued in the last 3 years prior the reference year.

Any modernisation of the construction must be declared in order to recalculate the tax and the tax base.

In case of buildings, the value of which was entirely written-off, the tax rate is 1.5% applied to the book value of the building after its last valuation and the tax base is reduced by 15%. If a building has not been valued in the last 3 years preceding the reference fiscal year 2015, the land tax rate and the tax on buildings is 5% applied to the book value of the building. Fiscal year of reference is conventionally the calendar year. If the buildings have a touristic destination and are closed in a calendar year, the tax rate is 20% applicable to the value of its inventory. Exempted are structures which are in a building permit validity period, if the construction works began within 3 months from the date of issuance of the building permit, in which case the tax rate is 1.5%.

In case of individuals, the tax rate is 0.08% from the taxable value of the residential building, whereby the taxable value is determined either by the purchase price of the real property or the last valuation report value. For non-residential buildings owned by individuals the building tax is calculated by applying a quota of 0.2% - 1.3% on the value that may be:

a) Value from a valuation report.
b) Final value of the construction works for buildings made in the last 5 years.
c) The value of the building according to the agreement by which the property right is transferred for buildings acquired in the last 5 years prior the reference year

For non-residential buildings used in the agriculture field the applied quota is 0.4% from the imposable value of the building. In the case in which the value of the building cannot be calculated a 2% quota will be applied on the determined imposable value.

For residential buildings owned by companies the applied quota is 0.08%-0.2% from the imposable value of the building. For non-residential buildings owned by companies the tax is calculated by a quota of 0.2%-1.3% of the imposable value of the building.

For non-residential buildings owned by companies that are used in the agriculture field, the applied quota is 0.4% of the imposable value of the building.
The imposable value is determined on the basis of:

a) the last registered value according to the bookkeeping of the fiscal authority;
b) the value resulting from a valuation report;
c) the final value of the construction works in the fiscal year;
d) the value of the buildings resulting from the agreement on which the property right is transferred in the case of buildings acquired during the fiscal year;
e) for buildings from a financial leasing, the value derives from the valuation report;
f) in the case of buildings for which the tax is owned, the value from the bookkeeping of the landlord and communicated to the leaseholder, tenant, the holder of the administration right or of usage.

Land tax

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

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

ENCUMBRANCES

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

Overview on fees and taxes:

Taxes and Fees	Rate
Tax on real estate transactions	fixed fee + between 1% and 3% of the contract value, depending on the value and time passed between the acquisition date and the transaction date.
registration of ownership	0.15% of the contract value for individuals and religious cults and 0.5% of the contract value for legal entities
VAT if applicable	usually 20%, reduced rate of 5%, reverse charge or exemption
registration of mortgage	EUR 25/Land Register object + 0.1% of the amount stated in the mortgage
Real Property Tax	for buildings, it heavily varies depending on the case and varies between 0.25% to 1.5%

Environmental Liability

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

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

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SLOVAK
REPUBLIC

REAL ESTATE LAW IN THE SLOVAK REPUBLIC

The Land Register

In Slovakia, the Land Register is a uniform register which contains all rights with respect to real property, such as ownership, mortgages, easements, rights of first refusal, tenancy rights to land lasting more than 5 years and others. In addition, it also contains the description of real property as well as its geometric determination. The Land Register is administered by the cadastre department at each district office, which is generally the office where the real property is situated.

The Slovak Land Register is based on several principles, the most important being the principle of registration, the principle of formal and material publicity, the principle of legality and the principle of priority.

According to the principle of registration ownership as well as other rights with respect to real property come into existence, change or cease to exist only upon registration with the Land Register, unless the Slovak Civil Code or other regulations in exceptional cases determine otherwise. The Land Register is a public register, which everybody is entitled to access and to obtain excerpts thereof. According to the principle of material publicity the assumption applies that data registered with the Land Register are reliable and binding, unless the opposite was established. The principle of legality confers on the competent authority an obligation to examine whether the conditions for a valid registration have been met. According to the principle of priority, rights with respect to the same real property are registered in a ranking order on a first come, first served basis.

RESTITUTION

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

Acquisition of Real Property

In general, ownership of real property may be acquired on the basis of purchase, donation or other agreements, intestacy

or succession, decision of a state authority or based on other circumstances determined by the law. Generally, real property may be acquired by natural as well as legal entities.

ASSET DEAL

As far as the contractual acquisition of real property is concerned, the law sets forth two main conditions for a materially effective transfer of the ownership rights. First, a written contract is required as the legal basis for the transfer of the ownership to the real property and second, the transfer of the ownership right has to be registered with the Land Register. Hence, the written contract constitutes the "title", while the registration with the Land Register constitutes the "modus". Normally, the registration procedure with the Land Register takes 30 calendar days, yet the parties are given an option to apply for a reduced procedure, which takes 15 calendar days. The legally binding resolution on the permission of the registration constitutes the independent legal fact causing the acquisition of the ownership rights to real property.

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

SHARE DEAL

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

Adverse Possession - Usucapion

Unlike in other European countries, in Slovakia the acquisition of real property by way of *usucapion* is not uncommon. One of the main reasons may be the relatively short *usucapion* period which amounts to only ten years. The period within which the real property was in the possession of a qualified legal predecessor of the current possessor counts against the above mentioned ten years period. Another condition for the acquisition of

real property by way of *usucapion* is that possession was undisturbed during this ten year period. The possessor might be a natural person but also legal entity. In the interest of legal certainty, the *usucapion* of real property has to be publicly established, attested and declared. Therefore, a notary has to attest the possessor's declaration of the *usucapion*. The attest is issued in the form of a notarial deed. The notarial deed is subsequently forwarded to the Land Register that performs the registration of the acquisition of the real property by *usucapion*. In case that the prior owner objects the veracity of the notarial need in connection with fulfilment of conditions for the real property acquisition by usucapion such disputes need to be solved by the competent court.

ACQUISITION OF REAL PROPERTY BY FOREIGNERS

Since the accession of Slovakia to the European Union, the strict restrictions on acquisition of real property by foreigners have been substantially relaxed. Foreigners are nowadays allowed to acquire real property without any limitations except for requirements for the acquisition of the agricultural land which apply to inhabitants of the Slovak Republic as well.

Encumbrances

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

MORTGAGES

Similarly to other European countries, Slovak legal order understands mortgage as a type of lien against a real property. If a mortgage is established by means of a contract (besides other types of the mortgage establishment), the law requires written form for the contract. According to the principle of registration, the contract itself is, however, not sufficient for the establishment of the mortgage, but the mortgage has to be registered with the Land Register in order to be effective. Under the Slovak law the mortgage shall be effective against every further owner of real estate if the agreement on the establishment of the lien or a special act does not stipulate otherwise. A mortgage may also be established in relation to a real property which will come into existence only in the future or

the existence of which depends on the fulfilment of any conditions or to the real property that the person in question shall acquire in the future.
The person of the mortgagor and the debtor may be different.

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

EASEMENTS

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

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

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

Buildings on Third Party Land

PECULIARITIES CONCERNING OWNERSHIP RIGHTS TO BUILDINGS

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

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

Lease of Real Property

RESIDENTIAL PREMISES

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

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

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

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

BUSINESS PREMISES

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

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

If a lease agreement was concluded for an indefinite term, both the landlord as well as the lessee are entitled to terminate the agreement without stating any reason, unless otherwise provided in the lease agreement. Unless otherwise agreed, the notice period is three months.
On the other hand, if a lease agreement was concluded "only" for a fixed term, it may be terminated for the causes as set forth in the said Act. Whether these causes might be changed or altered by agreement of the contracting parties or not cannot be clearly inferred from the wording of the provision. Yet, jurisprudence exists that these causes are mandatory and cannot be deviated from.

OPERATING COSTS AND RENT

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

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

MAINTENANCE AND REPAIR

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

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

EFFECTS OF CHANGE OF CONTROL

Lessee

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

Owner

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

Public Permits

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

Taxes and fees

Real estate taxes in Slovakia are divided into three types, i.e. land tax, building tax and residential/non-residential premises tax in residential houses. There is no real estate transfer tax in Slovakia anymore.

Real estate taxes concern solely to acquirers of real estate based on various modi

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

Gains on real estate transactions are subject to income tax on the side of the seller. The income tax rate for individuals is 19% or 22% and for legal entities 25%. The most significant exemption from taxation applies to real estate in the ownership of the seller for a period longer than 5 years, in which case the sales margin is not subject to taxes.

Both for the registration of ownership as well as for a mortgage the same registration fee for the Land Registry applies. The registration fee amounts to EUR 66 for cases of ordinary procedure and EUR 266 in case of speed up procedure.

Overview on fees and taxes:

Taxes and Fees	Rate
Real Estate Transfer Tax	N.A.
registration of ownership	EUR 66 or EUR 266
VAT (in case of VAT taxpayers)	20% of consideration
registration of mortgage	EUR 66 or EUR 266
Real Property Tax (depending on the nature, location and value of the real property)	EUR 1.8845 per m^2 (average tax rate in 2015 applicable to business premises) EUR 0.2910 per m^2 (average tax rate in 2015 applicable to land plots for building purposes) 0,2293 EUR/m^2 (average tax rate in 2015 applicable to apartments) -0,0019 EUR/m^2 (average tax rate in 2015 applicable to agricultural land)

Environmental Liability

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

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