

### 3. ROMANIAN REAL ESTATE LAWS

*Updated September 2015*

The relevant **Romanian real estate & construction laws and regulations** are:

- ✓ The Romanian Civil Code of October 1<sup>st</sup>, 2011, as amended (“**Civil Code**”)
- ✓ The Romanian Constitution of 2003
- ✓ Land Law no. 18 of 1991 as amended
- ✓ Law no. 50 of 1991 on Authorization of Construction Works as amended
- ✓ Law no. 7 of 1996 on the Survey and Real-Estate Publicity as amended
- ✓ Law no. 213 of 1998 regarding the Public Domain Assets as amended
- ✓ Law no. 312 of 2005 on the Acquiring of Ownership over Real Estate by Foreign Citizens, Stateless Persons and Foreign Legal Entities
- ✓ Law no. 350 of 2001 on Territorial Planning and Zoning, as amended
- ✓ Law no. 247 of 2005 on Reform regarding Property and Legal System, as amended
- ✓ Law no. 10 of 2001 on the Legal Regime of Real Estate Abusively Taken over Between March 6, 1945 and December 22, 1989, as amended
- ✓ Law no. 112 of 1995 on the Legal Regime of Residential Buildings Transferred into State Property, as amended
- ✓ Law no. 33 of 1994 on Expropriation for Public Utility Reasons, as amended, and Law no. 255 of 2010 regarding the Expropriation for Public Utility Reasons, Necessary for Carrying Out Certain Objectives of National, County, or Local Interest, as amended

#### **General**

After the fall of the communism regime in 1989, several laws were enacted with regard to the rights of the former owners to reclaim their properties which were abusively taken over by the State during the communist era, or to obtain compensation in case that the restitution was not possible.

#### **Ownership over land and buildings (“Property”)**

##### *Private & public property*

The property of the State and of the local authorities is divided between the “public domain” and “private domain”.

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The property which is included in the “public domain” is established by law. The State and the local authorities cannot sell or dispose of such assets. However, they may lease or grant a concession of public domain assets to third parties by auction.

The State and the local authorities may dispose of the property which is part of the “private domain”.

Assets in the “public domain” can be transferred to the “private domain” pursuant to normative/regulatory acts of the relevant authority, and may be issued according to the special provisions of the law.

#### *Foreigners’ right to acquire land*

Law no. 312 of 2005 provides the general terms for foreign citizens and/or companies to purchase land in Romania as follows:

- (i) Citizens of European Union (“**EU**”) who are residents in Romania, and EU-based companies, which have a permanent establishment in Romania may acquire ownership rights over land under the same conditions as Romanian citizens;
- (ii) EU citizens who are not residents in Romania, and EU-based companies, which do not have a permanent establishment in Romania, may acquire ownership rights over land five years after the accession of Romania to EU, i.e. starting from January 1, 2012;
- (iii) all the other foreign citizens may acquire ownership rights over the land based on mutual treatment provisions of international treaties concluded between Romania and the foreign citizen’s state - however, no such mutual international treaties have been concluded so far;
- (iv) EU citizens and companies may acquire ownership rights over the land used for agricultural and forestry purposes seven years after the accession of Romania to EU, i.e. starting from January 1, 2014.

#### *Acquisition of the ownership right over buildings by foreigners*

The foreign citizens and/or companies may acquire ownership rights over buildings. A superficies right for as long as the building exists can be established with regard to the plot on which the building is located.

#### **Acquiring Property Rights**

In addition to property rights Romanian law acknowledges the following ancillary rights in respect of real estate property:

- a. superficies;
- b. usufruct;
- c. right of use;
- d. right of habitation;

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- e. easement;
- f. right of administration;
- g. concession right;
- i. mortgage right; and
- j. any other right which may be conferred by a special law.

The ownership right and any of the above rights may be registered with the Property Registry.

#### *Formal requirements*

All deeds transferring ownership rights over real estate property must be executed in notarized form in order to be registered with the Property Registry.

#### *Issues to be reviewed when acquiring property*

When purchasing property, a non-exhaustive due diligence review should cover the following:

- a. property title;
- b. previous property titles;
- c. excerpt of the Property Registry;
- d. fiscal certificate of the seller;
- e. status of the encumbrances over the property, if any;
- f. status of easements for public utilities, if any;
- g. disputes regarding the property, if any;
- h. zoning regime.

#### *Sale and Purchase Agreements*

The most common way to transfer ownership rights over property is by concluding a sale-purchase agreement.

First, the parties may conclude a promissory agreement whereby they agree to conclude the sale and purchase agreement. Such promissory agreement is binding upon the parties. However, if one of the parties does not comply with the promissory agreement, the other party may sue for a declaratory judgment *in lieu* of a sale and purchase agreement, or for damages.

The Civil Code provides that the transfer of ownership over property becomes effective only upon registration with the relevant Property Registry. However, where the survey works of the territorial unit where the respective property is registered are not finalized the transfer of ownership becomes effective according to the agreement of the parties mentioned in the respective transfer contract.

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Under the Civil Code, the forestry may be transferred only by observing the pre-emption right of the co-owners and/or of the neighbours.

The arable land may be transferred only by observing the pre-emption right of the sharecrop farmer.

The main obligations of the seller under the Civil Code are to hand over the property, and to guarantee for eviction. The seller is also liable for hidden flaws.

The buyer's main obligation is the payment of the price. The seller may either initiate an enforcement procedure for the payment of the price, or terminate the contract, if the buyer fails to pay the price pursuant to the contract.

### *Financial Leases*

Pursuant to the Government Ordinance no. 51 of 1997 regarding Leasing Operations and Leasing Companies, real estate may be the object of financial leases. The financial leases regarding real estate must be registered with the Property Registry.

### *Lease Agreements*

The Lease Agreement should be in a written form. No particular formalities are required. In order to be opposable to third parties, the Lease Agreement should be registered with the Property Registry where the real estate is registered.

Pursuant to the Civil Code, Lease Agreements may be concluded for a period of up to 49 years. In case a Lease Agreement is concluded for a period exceeding 49 years, its validity period is reduced up to 49 years.

If the lessor intends to sublease the property, it is advisable to include a clause in the Lease Agreement which would allow the sublease.

Art. 1798 of the Civil Code provides that the Lease Agreement which was registered with the Tax Authority, or was authenticated by a notary is an enforceable title with regard to the obligation to pay the rent.

### *In-kind contribution to the share capital of companies*

Property may be contributed in-kind to the share capital of a company. The value of the contribution must be confirmed by a licensed expert. By bringing real estate as an in-kind contribution to the share capital of a company, the title owner transfers its ownership right over the property to the company.

### **Property mortgaged as security**

The property may be mortgaged in favor of creditors as security for the performance of an obligation or repayment of a debt.

The mortgage agreement in respect of real estate property must be authenticated by a notary.

The rank of the mortgage is determined by the date and time of the registration with the Property Registry. The first creditor to register the mortgage in the Property Registry will have priority over

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subsequent creditors for enforcement purposes. If multiple applications for the same property are received by mail or courier by the Property Registry at the same time, the mortgage rights covered by the respective applications will have the same rank.

The Civil Code provides the possibility of concluding a mortgage over an universality of assets similar to a floating charge. The mortgage over a universality of immovables will only be valid after the registration thereof with the Property Registry with regard to every immovable asset. The mortgage over the universality of present or future immovables is possible only if such immovables serve the current activities of a company.

Although the mortgage over future assets is generally void and unenforceable, the Civil Code provides an exception in case of a mortgage on future constructions that may be built. However, such mortgage can only be temporarily noted in the Property Registry, i.e. until such construction is built. Thereafter, the mortgage over the construction can be registered with the Property Registry.

Also, the mortgage over assets conventionally declared non-transferable shall be considered valid as mortgage on future assets. However, a mortgage over assets declared by law as non-transferable is not possible.

The clauses prohibiting any act of disposal over the mortgaged real estate are not valid according to the Civil Code, even if the buyer was aware of the contractual interdiction to dispose of the mortgaged asset.

*Special encumbrances (privilegii)* over immovables are considered to be legal mortgages according to the Civil Code.

The Civil Code provides several types of *special encumbrances*. Such *special encumbrances* are constituted to the benefit of certain creditors such as (i) the seller of the property for the rest of the price, (ii) the promissory buyer for the advance, if the promise to sell is not executed, (iii) the creditor that provides financing for the acquisition of property, (iv) the architect, contractor, and construction workers for their services, and materials, (v) the person who transferred a real estate in exchange for maintenance, for the payment of the annuity related to the non-performed maintenance, (vi) co-owners for the price owed by the co-owner who purchases their rights re the real estate; (vii) the administrator of the estate for the payment of his/her fee by certain heirs.

A *Movable Mortgage* over the improvements of the real estate may be granted in favour of a creditor. Such movable mortgage can be established based on a mortgage contract, concluded either in authenticated form or under private signature. The movable mortgage has to be registered with the Electronic Archive for Security Interests in Movables. The rank of the registration of the movable mortgage is determined according to date and time of registration of the application.

### **Publicity formalities of the Property Registry**

The Property Registry comprises a description of the property, and of the rights over or in connection with the respective property. The property rights registered with the Property Registry are opposable against third parties.

With regard to the registration of rights with the Property Registry, the Civil Code also provides two legal relative presumptions, i.e. (i) the presumption related to the existence of the act or right if it registered with the Property Registry, and (ii) the presumption of the inexistence of a right which was de-registered.

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The following information is recorded in the Property Registry: name of the owner, survey number, sqm area, location, adjacent neighbours, mortgages, encumbrances, easements, and leases if registered.

The Civil Code provides three types of registration: (i) the registration (*intabularea*), (ii) the provisional registration, and (iii) the notation. The first two refer to real estate rights while the notation mainly concerns other rights, e.g. the interdiction to sell the asset, the destination of a real estate as family home, and legal acts or facts related to the registered real estate, e.g. notation of a claim regarding the respective property.

The Civil Code also establishes the right of any person to have access to public registries, even if such person does not justify an interest.

## **Construction permits**

### *Urbanism Plans*

There are three types of urbanism plans provided by law:

- a. General Urbanism Plan (*Plan Urbanistic General* - “**PUG**”);
- b. Local/Areal Urbanism Plan (*Plan Urbanistic Zonal* – “**PUZ**”); and
- c. Detailed Urbanism Plan (*Plan Urbanistic de Detaliu* – “**PUD**”).

The PUG is a general plan for the development of a certain area. It mainly sets forth the city limits, the zoning of the land located within the city, the areas affected by easements, the protected areas, the requirements function of location, and the conformity requirements of the constructions.

The PUZ is a plan which covers specific areas of the PUG. It ensures coordination between various development plans in the area and the PUG. A construction project must be in compliance with the PUZ approved by the municipality.

The PUD is a technical study that establishes the requirements for building a construction on a plot of land in compliance with the architectural and urbanism regulations. The PUD ensures the coordination between the development plan and the PUG of the respective municipality.

### *Urbanism Certificate*

The law requires the issuance of an Urbanism Certificate (*Certificat de Urbanism*) prior to the start of building, transformation, and demolition works. The Urbanism Certificate provides information regarding the legal, economic and technical regime of the land and of the construction, zoning requirements, as well as the list of approvals and permits that must be obtained in order to obtain a Construction Authorization.

The Urbanism Certificate is issued by the local municipality of competent jurisdiction.

The Urbanism Certificate must be issued within 30 days as of the filing of the application and related documentation.

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### *Construction Authorization*

Construction works can start only after the issuance of the Construction Authorization (*Autorizație de Construire*) that is issued by the local municipality in order to ensure compliance of the future constructions with the legal provisions regarding zoning, design, and scope thereof.

Depending on the zoning of the land and the type of building, there are different steps for the issuance of the Construction Authorization.

The Construction Authorization may only be issued after obtaining the Urbanism Certificate, and the authorizations and permits mentioned in the Urbanism Certificate. The Construction Authorization is issued upon the application of the owner of the project. A lessor, or a concessionaire may also obtain a Construction Authorization provided that it obtains the agreement of the land or building owner in case of remodeling an existing structure.

Construction works, which do not affect the structure of the building, its characteristics, or architecture, may be performed without obtaining a Construction Authorization.

When the construction of the building is finalized, the builder must convoke the beneficiary for the Final Reception, i.e. the handover of the building. The Final Reception is attended by the builder, the designer/architect, a representative of the local municipality which issued the Construction Authorization, and the investor. The attendees sign the Final Reception Minutes which will be used for the registration of the building with the Property Registry.

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