Real Estate Investment in Romania

THE LEGAL PERSPECTIVE

DLA PIPER

Introduction

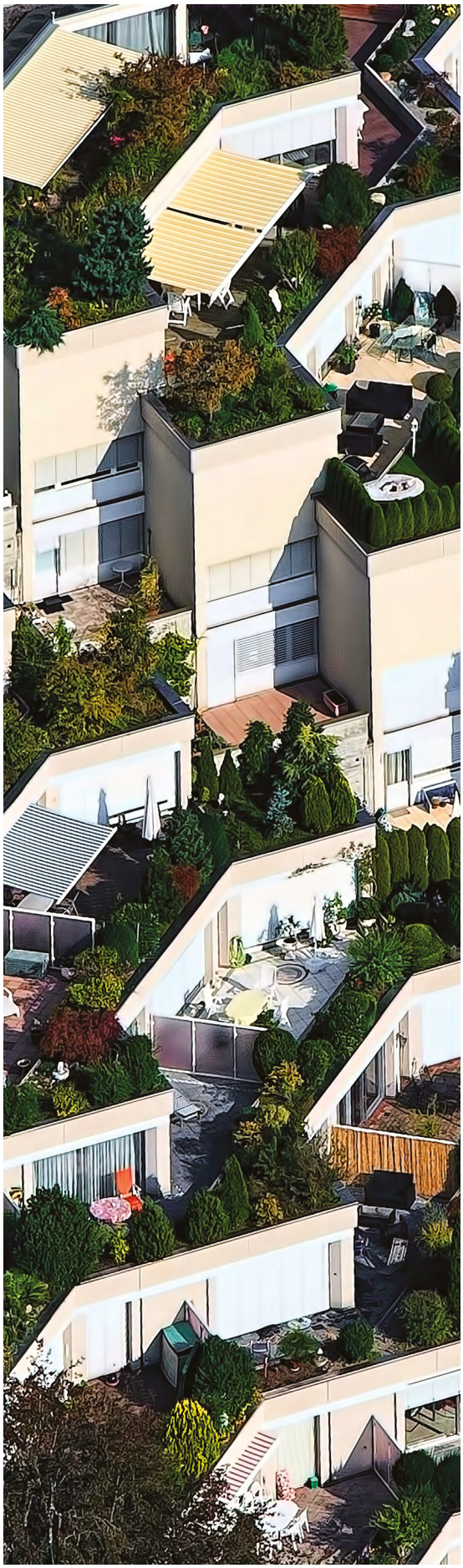
The Romanian real estate market has been on an upward trend in all real estate sectors since the beginning of 2015. The strongest sign of such recovery is the interest shown by new market investors, including institutional investors, and by the return of those investors who had previously suspended projects in the country. The market is now sustained with a greater number of low-value projects, which is a sign of stabilization and maturity.

In most Romanian cities the average price of both old and new apartments has increased. In the first quarter of 2018, nationwide there were about 1,500 residential projects under construction with at least 30 apartments in each project. The average rent for office premises in Bucharest has reached the highest level since 2011 while the average price of houses and land has maintain its upward course.

As per the market intelligence, Bucharest has the largest office space available in Romania at approximately 3 million m^2, followed by Cluj Napoca, Iasi, Timisoara and Brasov, with rental prices varying between EUR13 and EUR25 per m^2 per month. There is an increasing interest for office space generated by almost 60% of IT, BPO and professional services companies. Also, the available space of offices in Brasov, Timisoara, Iasi and Cluj-Napoca is likely to grow by almost 25% to a total of 900,000 m^2. In 2018, the stock of office space available in Romania will increase by 400,000 m^2, compared to 140,000 m^2 completed in 2017. There is great competition for expansion among retailers from the food industry. In the larger cities, hypermarkets and supermarkets are in demand, while in smaller towns, with lower purchasing power, the focus is on convenience stores. The first quarter of 2018 had a positive start for the investment market, with important transaction signed and concluded in the offices sector.

By the end of the year new transactions are expected to be announced, as well as the entry of funds for new investments in the market. Romania is now an attractive destination across all sectors (offices, industrial and commercial). This is due to the development of assets that are comparable, and in some cases superior, to those available in more developed markets. The yields are also more attractive when compared to other CEE countries.

This document is intended to serve as a guide to the most relevant civil and tax law aspects of investing in Romanian real estate, which we have produced by drawing from our practical experience and knowledge of all available investment structures and their respective tax implications. As the guide does not claim to be exhaustive, our experienced Romanian real estate team will be happy to assist you if you have any further questions.



Contents

1. OWNERSHIP OF REAL ESTATE 05

1.1 Full ownership 05

1.2 Other rights over real estate 05

1.3 Condominium 05

1.4 Restrictions on ownership by foreigners 06

2. ACQUISITION OF OWNERSHIP 07

2.1 Formal requirements 07

2.2 Registration 07

2.3 Asset deals 07

2.4 Share deals 08

2.5 Public auctions 08

3. OTHER RIGHTS TO PROPERTY 10

3.1 Mortgages and charges 10

3.2 Easements 10

3.3 Pre-emption rights 11

3.4 Promise to sell/option agreements 11

4. ZONING AND PLANNING LAW PERMITS 12

5. ENVIRONMENTAL LIABILITY 14

6. LEASES 15

6.1 Duration 15

6.2 Rent 15

6.3 Rent review 15

6.4 Operating expenses 15

6.5 Maintenance, repair and renovation at end of lease 15

6.6 Assignments/transfers 15

6.7 Subleases 16

6.8 Termination 16

6.9 Sale of leased property 16

7. TAX 17

7.1 Transfer taxes 17

7.2 Value added tax 17

7.3 Other real estate taxes 17

7.4 Taxation of rental income from real estate 18

7.5 Taxation of dividends from a company owning real estate 18

7.6 Taxation of capital gains on real estate 18

7.7 Taxation of capital gains from the disposal of shares in a company owning real estate 18

7.8 Real estate investment trusts 19

8. REAL ESTATE FINANCE 20

8.1 Assets held as security 20

8.2 Further collateral agreements 20

8.3 Taxation on the creation of security 21

GLOSSARY 22

CONTACT 23

ABOUT DLA PIPER 23

1. Ownership of real estate

1.1 Full ownership

The right of full ownership entitles the owner to full powers, including the rights to possess, to use and to dispose of the property. These rights can be exercised absolutely, exclusively and continuously. The right of full ownership is protected under constitutional provisions and can be limited only by law. The right of full ownership can be exercised only within the material limits of the property. These material limits mean the physical boundaries of the property. The owner, through its will, can also limit the rights established by law. Ownership can be either exclusive or common. Common ownership consists of either joint ownership (ownership by two or more persons each owning the property as a whole with no express apportionment) or co-ownership (ownership by two or more persons holding allocated proportions of the property). Co-ownership can be ordinary or forced, for example forced co-ownership over the common parts of a building.
The most severe restriction on full ownership permitted by law is expropriation (i.e. compulsory purchase). Expropriation is possible in Romania if the property is needed for reasons of overriding public interest, at a local or national level. As a principle, expropriation requires that fair and equitable compensation is paid to the owner of the property. If the parties involved do not agree on the amount of compensation, the court can decide. Ownership in real estate must be registered in the Land Book. Registration is needed for the valid transfer of the right of ownership but registration will not take effect until the finalization of the relevant cadastral plans. Therefore, for the moment in Romania, the registration has only an opposability effect. This means third parties can take the benefit of the contracts in land on the basis that they must also comply with the obligations.

1.2 Other rights over real estate

The beneficiary of a superficies right has a complex right consisting of (i) the right to own or to construct a building on another person's land and (ii) the right of use over the relevant land. A superficies right can only be transferred through a deed authenticated by a notary public and together with the ownership of the building (as opposed to the ownership of the land, which can be transferred independently).
A superficies right can be granted for a period of no more than 99 years with the possibility of renewal.
A right of usufruct is a right to hold and use an asset owned by another person and to benefit from the income from the real estate without consuming its substance (Romanian *fructe*). The beneficiary of the right of usufruct cannot sell or otherwise dispose of the relevant asset and cannot alter the asset's substance in any way, but can assign the right.
A right of usufruct can be granted for:

(i) the life time of the beneficiary, if the beneficiary is an individual; or

(ii) for a period of no more than 30 years, if the beneficiary is a legal entity.

A right of use is the right to hold and use a commercial property asset owned by another person and to take income from the real estate without consuming its substance (except for income resulting from the conclusion of agreements related to the property), but only for household needs. The beneficiary of the right of use cannot assign its right.

A right of habitation has the same characteristics as a right of use but applies where the property is a residential dwelling. An easement is a right for the benefit of the owner of one plot of land (the dominant tenement) over a plot of land owned by another person (the servient tenement). A concession right is a right and at the same time an obligation for a person to use part of the private or public property of the Romanian state or its administrative bodies for a limited period of time following a public tender procedure. It can be granted for a maximum of 49 years with the possibility of an extension for a further period equal to half of the initial duration.

1.3 Condominium

The concept of condominium in Romanian legislation covers individually owned dwellings and spaces within a building, as well as the common parts of that building. Usually, a condominium is formed by a building with many living spaces, owned by different persons.

For condominiums, the ownership over the common parts of a building is a forced co-ownership. The difference between ordinary co-ownership and forced co-ownership is that ordinary co-ownership includes the ability to agree the rights to share the common parts with the sanction of the court. The only way to terminate co-ownership over the common parts of a building is by mutual consent of all owners.

The forced character of the co-ownership within condominiums means that it was not the decision of the owners to jointly acquire the parts, but these are accessories of the dwellings and are necessary for use of or access to the building.

Within forced co-ownership, each owner has obligations to take measures concerning their common rights. Each owner may perform improvements or alterations to their own dwelling (observing the legal provisions regulating the authorisation) but must do so without damaging the integrity of the building structure, nor the other dwellings in the building.

1.4 Restrictions on ownership by foreigners

Following Romania's accession to the EU on January 1, 2007, individuals and companies within the EU or EEA (European Economic Area) who are resident in Romania are allowed to purchase land subject to the same conditions as Romanian individuals and companies.

The citizens of a third-party state and persons or companies residing in a third-party state are limited to being able to acquire only agricultural land located outside the city limits, subject to reciprocal conditions regulated by international treaties.

2. Acquisition of ownership

2.1 Formal requirements

For the acquisition of ownership over real estate, any agreement must be in the form of a notarial deed signed in front of a notary public in Romania. If this requirement is not met, the transfer is invalid. The transfer of property must also be registered in the Land Book. At the moment, the implementation of the Land Book system is not completed and the registration only has an opposability effect for third parties.

There are several cases in which these formal requirements are not necessary such as inheritance, natural accession, enforced sale, expropriation by the state and other cases expressly provided by law. In such cases, the acquisition of ownership is valid without formal requirement. However, the owners must be registered in the Land Book in order to dispose of the property.

2.2 Registration

The effect of registration in the Land Book is postponed until the finalization of the cadastral plans in Romania. Thus for the moment, the registration only has the effect of allowing third parties to be aware of the transaction. The registration can be completed on the basis of a notarial deed, a peremptory judgement of the court, an inheritor certificate (where inherited) or another deed issued by the administrative authorities if the law provides so.

If two different buyers acquire the same real estate from the registered owner, the first to register the right in the Land Book, if acting in good faith, will be deemed to be the new legal owner, while the other buyer can only attempt to recover the selling price and any other proven loss from the seller via litigation in the court.

Title insurance is not a legal requirement but can be taken out in Romania. Due to the risks generated by the previous communist regime in relation to real estate ownership in Romania, some investors choose to protect large investments by taking out title insurance policies. However, there is a cost associated with this and title insurance is not widespread in Romanian real estate transactions.

2.3 Asset deals

Real estate transactions are structured either as direct acquisition of the real estate (an asset purchase) or as an acquisition of the company holding title to the property (a share purchase).

In addition, transactions are mostly structured to consist of two phases: the signing of a preliminary agreement followed by the due diligence period and the execution of a final transfer agreement, subject to the fulfillment of various conditions precedent.

Buyers usually carry out legal, environmental, tax and technical due diligence exercises prior to acquiring real estate. The transfer of the title to the real estate may also be subject to satisfactory due diligence investigations including the resolution of any issues discovered during the due diligence process.

For joint stock companies, there are specific requirements for corporate approvals for the sale and purchase of real estate, depending on the value of the transaction. Should the transfer value of the property exceed a specific threshold (50% of the book value of their total assets for private companies and 20% of their fixed assets, less receivables, for public companies), the transaction must be approved by the shareholders.

The contractual provisions that must be included in all sale and purchase agreements affecting real estate refer to: the parties, the identity of the property, the price and the obligation to sell and purchase the property.

The other provisions of the agreement can be freely negotiated between the parties. It may also contain provisions regarding the property transfer date, the allocation of risk, timing of payments, costs, physical condition, encumbrances, guarantees, insurance etc.

The sale of a building separately from the land where the seller owns both, gives the buyer the right to register a right of superficies in the Land Book even if such a right was not expressly granted to it in the sale and purchase agreement.

Under Romanian legislation, following the execution of the sale and purchase agreement, the seller will indemnify the buyer against:

- wilful actions of the seller that can lead to a loss of possession or ownership rights over the property by the buyer;
- any loss of ownership rights over the property, in whole or in part, due to a successful claim in court by a third party to a real right over the property. The buyer must ask the seller to defend any

such claims, otherwise the buyer will lose any recourse against the seller if the court's decision is adverse. If the seller fails to defend the buyer successfully, the buyer can force the seller to repay the purchase price and pay additional expenses plus damages; and
- against any hidden defects in the property, which existed or whose cause existed at the delivery time but were discovered by the buyer afterwards.

The parties may nevertheless contractually agree to limit or exclude liability in connection with the transfer of ownership but sellers cannot exclude liability arising from their own wilful actions.

Additional representations and warranties can be negotiated by the parties depending on the specific circumstances of the transaction, such as: environmental compliance, planning, financial standing etc.

In the event of a material breach by the seller in fulfilling its contractual obligations, the buyer is entitled to apply to the court for termination of the agreement, reimbursement of the amounts paid or advanced as purchase price and payment of damages for the losses incurred. In addition, the buyer may ask the seller to repair any defects, to replace the asset, or to reduce the purchase price.

However, the parties may agree that, if certain provisions of the contract specifically identified by them are breached, the agreement can be terminated by sending a written notice to the party in default. The court is not required to authorize such termination but can decide whether the termination was an abuse of process or occurred without complying with legal requirements.

2.4 Share deals

Another way to acquire real estate is to purchase the legal entity which owns the property.

The choice between acquiring shares and acquiring land is mostly tax and risk driven. A transfer of shares as opposed to real estate assets allows payment of registration and authentication taxes (which amount to approximately 1% of the purchase price) to be avoided.

One of the major benefits of the acquisition of real estate by way of share deal is that there is no obligation to pay VAT at the current rate of 19% of the purchase price.

Another advantage of the acquisition of a real estate by way of share deal is the fact that there are no restrictions regarding the value of the transaction and any person, irrespective of their nationality, can freely acquire shares.

Notwithstanding the above, the acquisition of real estate by way of share deal has negative implications as well. For example, the purchaser of the shares acquires the entire history and liabilities of the acquired company. In addition, certain statutory opposition periods apply in the case of transfers of shares in limited liability companies have to be observed by the parties. This can cause delay and, thus, in general the parties prefer to convert from limited liability into joint stock companies prior to the share transfer to avoid the opposition periods.

2.5 Public auctions

Real estate enforcement is when land belonging to a debtor is sold by the creditor in order to seek to recover the amount owed to the creditor through the sale of the land.

Real estate can be sold through public auction procedures, direct sale and other ways provided by law. Real estate enforcement begins with the creditor's claim, submitted at the office of the judicial executor, located in the same district as the real estate.

The judicial executor will provide notice to the debtor to pay their debt, otherwise the enforcement procedure will begin. The judicial executor will register this notice in the Land Book to prevent the debtor from selling the real estate and to inform third parties of the debt.

If in a period of 15 days from receipt of the notice the debtor does not pay their debt, the judicial executor will proceed to the public auction.

The judicial executor will survey the real estate and establish its value. The next step is the establishment of the date, hour and location of the public auction. The judicial executor will notify the creditor, the debtor, the owners of any other right over the real estate as well as any interested person.

The public auction will take place in the same district as the real estate is located. The judicial executor will offer the real estate for sale through three successive hails, starting with a higher price than the valuation. If no offer equal to the valuation is made, the public auction will be postponed by a maximum of 60 days. The auction will then start with a price equal to 75% of the valuation. The debtor cannot bid for the real estate themself nor through other persons.

The successful bidder has to submit the price of the real estate to the judicial executor within 30 days of the sale. The adjudication deed is submitted to the successful bidder following payment of the price. At this point the successful bidder becomes the owner of the real estate. There are no other formal requirements for the acquisition of ownership, but the right must be registered in the Land Book. Moreover, the owner cannot dispose of its property (for example to sell or to charge the property) if its ownership right acquired at auction is not registered in the Land Book.

As a general rule, a person acquiring property through an auction sale cannot have their ownership challenged by third parties.

3. Other rights to property

3.1 Mortgages and charges

A mortgage over real estate is created through a mortgage agreement, which must be executed in front of a notary public in order to be valid under Romanian law. The agreement must specify the mortgaged asset, the parties and the basis for the guaranteed obligation. It must also contain reasonably sufficient detail to determine the secured amount. Furthermore, in order to be enforceable against third parties and to rank in priority, mortgages must be registered in the Land Book. If more than one mortgage affects the same asset, their respective priority depends on when the application for registration was made.

Under the Romanian Civil Code, the assets affected by a mortgage agreement over an immovable asset e.g. land consisting not only of the immovable asset itself, but also (i) any products or rents arising from the real estate, but only after the registration of the commencement of insolvency or enforcement proceedings (ii) improvements (meaning anything done or added to the real property that increases its value, even those made subsequent to the mortgage registration) and (iii) any movable assets naturally linked to the relevant immovable asset.

The mortgage extends to the above mentioned assets without any registration formalities. However, if an ancillary movable asset was previously affected by a movable mortgage registered with the Electronic Archive of Security Interests, the creditor holding that mortgage has priority. On the other hand, if a movable mortgage is registered on the same day as an immovable mortgage over the same movable asset, the immovable mortgage has priority.

Legal mortgage rights
The Romanian Civil Code provides several types of legal mortgages such as:

(a) A seller can secure a mortgage over any unpaid part of the purchase price of their property.

(b) A legal mortgage right over real property is created in favor of the lender of the money used to acquire the relevant property, with the aim of securing the repayment of the loan. A legal mortgage is registered with the Land Book on the basis of the deed which identifies the asset secured by the mortgage.

(c) A legal mortgage right over real property which is both registered in the Land Book and the object of a sale purchase pre agreement, is created in favour of the promissory purchaser securing the amounts paid on the basis of the sale purchase pre agreement.

(d) A legal mortgage right over real property which is both created in favor of the architects and service providers, who build, rebuild or perform repairs over the real estate, securing the amounts due to them, but only up to the limit of the price achieved by the owner as a result of their work.

3.2 Easements

Easements are rights for the benefit of the owner of one plot of land (the dominant tenement) over a plot of land owned by another person (the servient tenement).

The owners of the dominant and servient tenements must be different persons and the properties must always be two different properties. An easement is registered over the land forming each of the dominant and servient tenements, as opposed to the landowners personally.

An easement must improve the utility of the dominant tenement by increasing its value or allowing greater ease of use for the dominant tenement.

The easement can be established by a legal transaction (contract, testament), by a court decision (inheritance, probate procedure, in the procedure of division of the co-ownership), by national authority (expropriation procedure) or directly by law (adverse possession and inheritance). When acquired by a legal transaction, the contract must be concluded in a notarized deed and registered in the Land Book.

3.3 Pre-emption rights

A pre-emption right is a personal right which grants a person a right of priority in relation to the purchase of an asset. This right is an exception from the freedom of contract principle, meaning that the seller cannot freely choose the buyer without first complying with the pre-emption right.

Under Romanian legislation, mandatory pre-emption rights apply in the following situations:

- when there is a statutory pre-emption right to acquire forest which is located within or at the borders of the state's public forest domain in favor of the Romanian state. This pre-emption right has priority over any other pre-emption rights for the acquisition of forests;
- co-owners and owners of forest have a statutory pre-emptive right to acquire private forest domain located in the vicinity of their forest;
- the Romanian state has a statutory pre-emption right to acquire historic monuments;
- persons who have constructed a building in good faith have a statutory pre-emption right to acquire the land privately held by cities, counties or communes, on which those buildings were erected;
- when selling agricultural land located outside municipal boundaries, a pre-emption right must be observed in favor of (and in the following order of priority): (i) co-owners, (ii) the relevant tenants, (iii) neighboring owners and (iv) the Romanian state, in each case at the same price and on the same terms. Any contract for the sale of land located outside the city limits entered into without observing this pre-emption right, or without obtaining the approvals required by the law is unenforceable and void.

3.4 Promise to sell/ option agreements

The preliminary sale agreement is an agreement between the seller and the buyer where they agree to conclude the sale within a certain period of time, at an agreed price. If either party cancels the sale, the other may take legal action (the court may make a judgment to supply a party's consent) and claim damages. Upon signing the preliminary sale agreement the buyer usually pays a deposit into an escrow account, being a portion of the price. Once the notarized sale agreement is signed, this deposit is deducted from the purchase price and the ownership right is transferred.

If the promissory buyer has paid the deposit but the seller does not perform its obligations, the buyer acquires a legal immovable mortgage over the asset which should have been sold, if the asset is registered in the Land Book.

An option agreement is an agreement between a party who promises to sell an asset for a certain price to another party (beneficiary of the option), if it is bought by the beneficiary within a certain period of time. In order to be valid, the option agreement must be concluded as a notarized deed and must specify the real estate and the purchase price. The ownership right over the real estate is transferred when the beneficiary of the option accepts to buy the property in a notarized deed.

Both preliminary sale agreements and options to buy comprise an agreement to sell which needs to be registered in the Land Book in order to be valid against third parties.

4. Zoning and planning law permits

The relevant legislation provides several general and local urbanism regulations and plans such as the general urban plan, the zoning urban plan and the detailed urban plan. The importance of these technical documents resides in the fact that they determine, among other aspects, the construction and zoning parameters for real estate.

The General Urban Plan (PUG) is drawn up for the regulation and development of a locality and sets forth general provisions which are based on the Zonal Urban Plans drafted for the different areas of such locality.

The Zonal Urban Plan (PUZ) is drawn up for detailed regulation of the development of a determined area within an administrative unit and sets forth the rules and conditions relating to which constructions may be built in a particular area.

The Detailed Urban Plan (PUD) regulates the conditions of location, dimensioning, urban compliance and serving of various objectives on one or more adjacent plots, in one or more locations, and in combination with the immediate surrounding districts. It is based on the PUG and the PUZ.

According to the legislation regarding construction works, construction works may be performed only after a building permit is issued by the relevant authority. The first step to be taken in order to receive a building permit is the issue of a locality planning certificate.

For certain categories of buildings, such as buildings over 28 m in height, a fire safety endorsement is needed.

The locality planning certificate contains the conditions and parameters that must be complied with by the designer of the building/ construction. The designer or the planning certificate may not deviate from the requirements set forth by the urban planning documentation of the respective area.

Approvals authenticated by a public notary are required from the neighbors: (i) for construction works necessary for the purpose of changing the designated use of existing buildings or (ii) for the development of buildings with a different use to that of the neighboring buildings. Any unjustified refusal from the neighbors can be assessed as such by court, and a court decision in that regard is a substitute for the neighbors' approval.

For construction works to take place, environmental approval is also necessary. This can be obtained by following several steps. The first step consists of the relevant authority establishing if an environmental impact study is necessary – this is a mandatory requirement for the issue of a building permit. If they find it is necessary, the investor/developer will notify the competent authority issuing the building permit of its intention to continue with the development. An environmental study will need to be prepared by the investor in accordance with the environmental regulations. The environmental approval document is a compulsory part of the documentation filed for obtaining a building permit.

Once the building permit is received, the construction works must start within 12 months from the date of issue. If the construction works start within the respective period of time, the building permit is valid for the entire duration of the construction works. However, the construction works must be completed within the period specified within the building permit.

5. Environmental liability

The environmental liability is determined on an objective basis and governed by the polluter pays principle (which effectively means that the person responsible for the pollution will be liable for damages). Where there are several polluters, they are jointly liable towards third parties and the authorities, but between them their liability is proportionate to their actual fault.

This principle refers also to a prior liability, thus the polluter also has to pay for preventive measures in order to avoid the pollution from occurring in the first place. The purpose of this principle is not to punish the polluter, but is an economic measure to ensure that the necessary conditions are established in order to cover all the environmental costs related to the polluter's activity, leading to long-lasting development.

If pollution is discovered, in order to avoid liability, the owner of the property must prove that the pollution was generated prior to the transfer of the ownership of the property, by the previous owner or tenant.

6. Leases

6.1 Duration

Lease agreements are usually entered into for a period of between three and ten years, depending on the type of property (usually longer in the case of industrial or anchor leases). However, lease agreements may be entered into for shorter or for indefinite periods of time. If no expiry date is provided and the parties did not want to conclude the agreement for an undetermined period of time, the duration can be determined either by common practice or by the Civil Code. The maximum duration of a lease agreement is 49 years. If the parties to the lease agreement seek to establish a longer duration, it will be automatically reduced to 49 years.

6.2 Rent

There are no mandatory legal requirements governing the indexation of rent in lease agreements. However, clauses expressly providing for indexation are common in longer lease agreements. Normally the rent will be linked to the Harmonized Consumer Price Index.

Leases concluded (i) as a deed under private signature and registered at the competent fiscal authorities or (ii) as a notarized deed, are legally binding for the payment of the rent on the terms and conditions of the lease agreement.

6.3 Rent review

Rents are generally linked to the Harmonized Consumer Price Index, and may also be linked to turnover, in particular in retail leases. The parties may agree on specific provisions governing changes in the rent and provide specific methods for calculation of the rent.

The landlord can choose to be registered as a VAT company or to have the property registered for VAT purposes. This will entitle it to recover VAT on its expenses, but the tenant must then pay VAT on the rent and on common expenses. The VAT rate is currently 19%.

The Civil Code also allows the Court to alter the parties' rights and obligations if exceptional and unforeseen events, which occur after the agreement is entered into, make the execution of the agreement overly burdensome and unjust for the debtor. The parties may contractually exclude the possibility of the intervention of the Court.

6.4 Operating expenses

The landlord has a general obligation to carry out any major and necessary repairs to the premises which are the subject of the lease. Therefore, unless the lease provides to the contrary, the expenses related to major remedial works are to be paid by the landlord without recovery from the tenant. The expenses generated by the day-to-day maintenance of the property are to be paid by the tenant (e.g. the removal of snow). It is also common for the parties to agree that the landlord will initially bear the cost of day-to-day expenses but then recharge them to the tenant.

The parties to the lease are free to decide which party will pay operational expenses (e.g. electricity, water, gas and other utilities). Generally, landlords enter into agreements with the suppliers of utilities, pay the related costs and recharge the expenses to the tenant according to consumption. Alternatively, the tenants sometimes enter into agreements directly with the suppliers of utilities.

6.5 Maintenance, repair and renovation at end of lease

Under Romanian legislation, the tenant is obliged to use the leased property prudently and diligently and only in compliance with the intended use provided in the lease agreement. If the intended use is not expressly provided for, the tenant must use the property for the use intended as presumed from the applicable circumstances (e.g. a dwelling cannot be used for commercial activities).

In buildings consisting of multiple apartments, any change in the intended use of the dwellings must be approved by the neighboring owners who are directly affected by the change and by the owners' association. The parties can, however, agree on specific contractual rules regarding the use of the property by the tenant in the lease.

The tenant can improve or alter the real estate provided its designated use is not affected and without causing any prejudice to the landlord. If such improvements are made without the consent of the landlord, the landlord can opt either to keep the improvements, without any compensation being due to the tenant, or to ask the tenant to remove them and repair any damage caused.

6.6 Assignments/ transfers

Unless the parties have expressly agreed otherwise, the tenant has the right to assign the lease agreement, in part or as a whole, to any third party.

Any prohibition on assignment set out in the lease agreement applies to both assignments of whole and part. If the lease agreement prohibits subletting only this is considered to be a prohibition to assign, even if not expressly stated in the lease.

6.7 Subleases

Under Romanian law, total or partial subletting of the lease is allowed unless expressly prohibited.

Any prohibition of subletting set out in the lease agreement covers both subletting of whole and part. If a lease agreement has been sublet, the landlord has the right to require the subtenant directly to perform its obligations.

6.8 Termination

When the lease agreement is entered into for a definite period of time, the agreement terminates at the expiry of the lease term and there is no obligation for the landlord to give any prior notice of termination or to renew the lease agreement.

Nevertheless, when the tenant continues to use the premises and fulfil its obligations after the expiry of the contractual or legal term, with no resistance from the landlord, a new lease agreement, subject to the same terms, including the guarantees, but for an indefinite period of time is deemed to have been concluded between the parties. The parties can expressly provide in the original lease agreement that the lease will not be deemed to have been renewed and will automatically terminate at its expiry date.

Lease agreements entered into for an undefined term may be unilaterally terminated by either party by serving a termination notice to the other party specifying a reasonable period of time for the arrangement to come to an end. The length of the reasonable period will depend on the circumstances.

Where the tenant is in default in paying rent or does not use the premises properly and in accordance with their designated use, the landlord generally has the right to ask the court to terminate the lease agreement and for the leased premises to be vacated and handed back. A landlord may also claim compensation for the damages resulting from the tenant's default. The parties can expressly agree in the lease agreement that the lease may be terminated without any interference by the court.
The vacation of the premises can only be requested by court order and the tenant will be liable for the payment of the rent due for the period up to the date that the court's decision is properly served, or the tenant effectively vacates the premises.

6.9 Sale of leased property

A sale of property that is leased does not affect the lease in any way if the publicity requirements of the tenant which put third parties on notice of the lease have been fulfilled. The benefits and the liabilities of the lease are transferred from the former owner to the new owner as their legal successor. The parties can establish, by mutual consent, the termination of the lease agreement if the leased property is sold.

A lease agreement which is not registered in the Land Book, but which relates to a property which is registered, is not enforceable against any subsequent owner of the leased property. If the lease agreement concerns property not registered in the Land Book, it is enforceable against subsequent owners only if the land has a certified date prior to that of the land transfer.

7. Tax

7.1 Transfer taxes

Romania does not levy any stamp or transfer tax on real estate transfer. Nonetheless, the purchase of real estate in Romania involves several costs such as notary's fees and Land Book registration fees.

The following fees are due in an asset deal involving real estate: (i) the fees of the notary public, which vary depending on the value of the transaction. For example, for real estate with a value higher than RON600,001 (EUR129,032*), a notarial fee of RON5,080 (EUR1,092*) plus 0.44% of the real estate value exceeding RON600,001 (EUR129,032*) is due and (ii) fees for registration in the Land Book, equal to 0.5% of the purchase price for companies and other legal entities, and 0.15% for individuals.

It is market practice for the purchaser to pay all fees and taxes relating to the transaction. However, the parties can agree to divide the costs.

* please note the amounts in EUR are approximate figures based on exchange rates at the time of publication.

7.2 Value added tax

VAT applies to the supply of (i) plots of land that can be built upon, and (ii) new buildings.

New buildings include existing buildings which have been refurbished and the cost of such refurbishment was at least 50% of the market value of the building after the relevant works were completed. Supplies of new buildings are taxable if the supply is made before December 31 of the year immediately following the year in which the building was occupied or first utilized. This includes the first utilization or occupation after a refurbishment.

Under current provisions of the tax legislation, the supply of buildable land and new buildings is subject to the reverse charge mechanism that implies for the VAT not to be paid between parties, but accounted for by the purchaser both as input and output VAT. The standard rate of VAT is currently 19%. VAT is not applicable for the transfer of a going concern.

7.3 Other real estate taxes

- Building tax

For corporate entities the annual rate of building tax is set by the local council and should in principle be between 0.08% and 0.2% for residential buildings and between 0.2% and 1.3% for non-residential ones. These rates can be amended each year by the local councils.

In the case of buildings which have not been re-valued in the three years prior to the relevant fiscal year, the building tax is 5%.

The value on which the tax is levied is the inventory value of the building which is the value from the December 31 prior to the year for which tax is due and can be, by way of example, one of the following:

(i) the last taxable value of the building registered with the fiscal authority;

(ii) the value emerging from a valuation report provided by an authorized evaluator;

(iii) in case of new buildings, the final value of the construction; and

(iv) the value of the building which arises from the sale agreement, if the building was acquired during the previous fiscal year.

When a building is rebuild, extended or improved in accordance with legal regulations and the inventory value changes accordingly with more than 25% from the initial value, the owner is required to declare it with the local authority. As a general rule, the building tax for the entire fiscal year is to be paid by the owner of the building as of December 31 of the previous year.

There are relatively few exemptions from building tax which are listed in the fiscal code. Local authorities are allowed to grant tax exemptions to companies on the basis of plans for regional development.

- Land tax

Land tax is calculated in accordance with a formula that takes into account the number of m^2, the ranking of the town/village where the land is situated, the area within the locality and the purpose for which the land is used. Each local council approves the methodology for determining the land tax following the general rules provided by the fiscal code. The land beneath a building is tax exempt.

As with building tax, local authorities are allowed to grant tax exemptions for companies, on the basis of plans for regional development.

7.4 Taxation of rental income from real estate

Rental income from real estate means the cash income or the income in kind, from the rental of real estate received by the owner, the beneficial owner or other legal holder.

If individuals obtain rental income from more than five lease agreements per fiscal year, the income is classified as income from independent activities and dealt with under separate regulations.

In the case of rental income, the gross income is established on the basis of the rent stated in the lease agreement, regardless of when it is paid. The net income is established by deducting from the gross income the expenses determined by the application of 40% of the gross income.

Legal entities operating in Romania have to pay profit tax for the cash income resulting from rental activities. Rental income is taxed at 16% and the taxable period is the fiscal year corresponding with the calendar year.

7.5 Taxation of dividends from a company owning real estate

A Romanian legal person who distributes/pays dividends to another has the obligation to deduct, to declare and to pay to the state budget the tax of 5% applied to the gross dividend.

The taxation of dividends is declared and paid no later than 25th day of the month after the dividends are paid. If the distributed dividends have not been paid by the end of the year when the annual financial reports have been approved, the taxation of dividends is due and has to be paid by the January 25 of the next year or until the 25th of the first month of the modified fiscal year subsequent to the year when the annual financial reports have been approved.

These provisions do not apply for the dividends paid by a Romanian legal person to another Romanian legal person if the beneficiary of the dividends holds at least 10% of the participation titles/shares of the legal person paying the dividends and has done for a full year until and including the date of payment of dividends.

Non-resident entities are subject to a 16% withholding tax (subject to there being no overriding legislation and no overriding provisions in applicable double tax treaties) on certain types of income derived from Romania, such as: capital gains, interest and royalties, dividends, commissions, income services (irrespective of where the services are performed only a few exceptions are provided for by the law) and income derived by non-residents from either the liquidation or the dissolution without liquidation of a Romanian legal entity. The withholding tax rate applicable for income derived from dividends is of 5%, while for certain other income derived by non-resident individuals, as of January 1, 2018, the applicable withholding tax rate is 10%.

7.6 Taxation of capital gains on real estate

As a general rule, Romanian entities and foreign entities located in Romania (such as (i) entities which have obtained profits from the transfer of the ownership right over real estate located in Romania or any rights related to such real estate assets, including the rental or transfer the right of use such real estate assets (ii) entities conducting their activities through a permanent working point in Romania, (iii) entities having their effective management in Romania and (iv) entities having their registered office in Romania, established according to the European legislation) and receiving capital gains on real estate have the obligation to pay taxation on the profit related to those capital gains in value of 16% from the taxable profit.

There is an obligation to submit an annual declaration regarding the profit tax until March 25 of the next year, if the law does not provide the contrary. Any foreign legal person may nominate a representative to fulfil these obligations.

When real estate is sold by individuals from own patrimony, a special income tax is payable. This is similar in nature to a transfer tax. The tax is payable by the individual transferring the ownership or other real property right. The tax is equal to 3% of the taxable income which is determined by reducing RON450,000 (amount which is not taxable) from the value of the transaction. This income tax is payable by the seller and must be paid to the notary public before the transfer agreement is authenticated.

7.7 Taxation of capital gains from the disposal of shares in a company owning real estate

The withholding tax is usually reduced or eliminated by double-tax treaties (at present, Romania is a party to more than 85 double-tax treaties which usually follow the OECD model), where a valid fiscal residence certificate is made

available by the non-resident beneficiary of the income at the moment when the payment is made. Also, for certain types of revenue (i.e. dividends, interest, royalties), the withholding tax rates can be reduced to nil, based on double-tax treaties provisions, if the relevant legal conditions are met.

In addition, in case the national legislation, the EU legislation or double-tax treaties provide different rates of withholding tax for the same income, the applicable withholding tax will be the one which is favorable for the payer (if the payer proves that it has the residence in a state which signed with Romania a treaty for reduction of double taxation and, when the case, proved that the requirements of the EU legislation are met).

Companies owning real estate and making capital gains from the disposal of shares have the obligation to pay taxation for the chargeable profit related to these capital gains. The buyer has the obligation to calculate, deduct, declare and withhold the income tax at the date of the transaction, if the buyer is a Romanian legal person or a foreign legal person having its permanent financial base registered in Romania.

The declaration and the payment of the profit tax must be made quarterly, until and including the 25th day of the month following the closing of the first three quarters of each fiscal year. The finalization of the payment due for each year takes place once the annual declarations of tax on both profit and tax on capital gains on real estate have taken place.

7.8 Real estate investment trusts

The concept of a trust or the split between legal ownership and beneficial ownership was introduced by the Civil Code which came into force on October 1, 2011.

A trust may only be created through a notarial deed. While anyone can be a settlor or a beneficiary of a trust, the trustee can only be one of the following: a credit institution, an investment company, a financial investment services company, an insurance company, lawyers or notaries.

In order to be binding on third parties, the trust must be registered in the Electronic Archive of Security Interest. If the object of the trust includes immovable property, the corresponding real rights must be registered in the relevant Land Books. The maximum duration of a trust is 33 years, and when it comes to an end the trust property is transferred to the beneficiary.

Alternative approaches may also be used, such as joint venture agreements where only one of the parties holds the rights of ownership over the real estate, or a mandate without representation, where an agent acts in its own name and account but in the principals' relative interests. Mandates without representation are not permitted if they are used for the purpose of avoiding legal obligations.

8. Real estate finance

8.1 Assets held as security

An immovable mortgage can be created only over real rights (e.g. a right of ownership or a right of use) and properties which include land, buildings and improvements to buildings, and movable assets naturally linked to the relevant immovable asset. The mortgage may be created only by the owner of the real estate.

While as a general rule, the owner of a plot of land is also the owner of the buildings located on it, they can be owned separately. In such cases, the owner of the building must have a right to use the land on which the building is located.

This right can also be subject to an immovable mortgage. A lender can enforce a mortgage only when the borrower is in default.

The enforcement of an immovable mortgage is a judicial procedure governed by the Romanian Code of Civil Procedure. It may only be conducted by a bailiff and under the supervision of a court. The commencement of enforcement proceedings against real property must be registered in the Land Book.

In order to be enforceable, a mortgage must comply with the following requirements:

- the obligation resulting from the loan that it secures must be certain (i.e. its existence must be proved), payable (i.e. the amount must have been previously determined) and due (i.e. outstanding);
- the creditor should have title to enforce. Under Romanian law, validly concluded mortgage agreements constitute enforceable titles; and
- it should be registered in the Land Book. The assets subject to the security can be disposed of by public auction or, if the price resulting from a valuation of the asset will be obtained and the parties agree, by direct sale.

8.2 Further collateral agreements

MOVABLE MORTGAGES

In order to acquire a movable mortgage over the borrower's movable assets (e.g. all of its movable assets, receivables, insurance etc.), a lender needs to enter into a movable mortgage agreement with the relevant borrower.

Unlike an immovable mortgage, a movable mortgage agreement does not need to be notarized in order to be valid, a private deed being sufficient. The mortgage may be granted over any type of movable asset belonging to the debtor in question, including future assets, but the security will only become effective after the debtor has acquired rights over the assets in question, and the secured obligation is created. In order to be effective against third parties, a movable mortgage agreement must be registered in the Electronic Archive of Security Interests. A mortgage over rental income must be registered in the Land Book as well and should be concluded as a notarized deed for that purpose according to Land Book requirements.

Movable mortgages over business assets may be taken over movable assets, either tangible or intangible, used by an entity to carry out its business. This covers the lease of the premises from where the business is conducted, fixed assets (such as machinery, equipment and tools), intellectual property rights, and, although not expressly mentioned by the law, it is also generally believed to cover goodwill and the business name. In order to be enforceable against third parties, movable mortgages over business assets must be registered both with the Electronic Archive of Security Interests and with the Commercial Registry.

THE ASSIGNMENT AGREEMENT

The assignment agreement is the convention through which the assignor creditor transfers to the assignee a debt against a third party. The assignment agreement transfers to the assignee all the rights of the assignor related to the debt as well as all the guarantee rights and accessories of the assigned debt.

The assignment agreement will be concluded between the assignor and the assignee, without any intervention from the assigned debtor. To be effective, the assignment agreement shall be communicated to the debtor or accepted by him. Before the notification to the debtor, the assignment agreement is effective only between the assignor and the assignee and the assignee can claim all that the assignor receives from the debtor, even if the assignment agreement is not enforceable against the debtor.

To be enforceable against third parties other than the debtor, the assignment agreement must be registered to the Romanian Electronic Archive for Security Interests over Movable Assets. Assignment of a receivable which has been secured with an immovable mortgage must be registered in the Land Book.

THE PERSONAL GUARANTEE AGREEMENT

The personal guarantee is the agreement through which a personal guarantor undertakes obligations towards a creditor to perform, either free of charge or in exchange for remuneration, the debtor's obligations if he fails to perform them.

The personal guarantee agreement is valid even without the debtor's consent.

A personal guarantee is never presumed. In order to be valid, a personal guarantee must be expressly assumed through a notarial or private deed. Without observing this requirement, the personal guarantee is invalid.

The personal guarantor cannot be forced to perform the obligation before the debtor either performs or refuses to perform it. If the guarantor is initially asked to perform before the debtor, the guarantor can refuse and request that the creditor approaches the debtor first. At the date of payment, if the debtor does not pay, the personal guarantor will be forced to undertake the obligation in his place. After the payment, the personal guarantor acquires all the rights that the creditor had against the debtor and has the right to recover from him the amount paid.

AUTONOMOUS GUARANTEES

Autonomous guarantees provided in Romanian legislation are the guarantee letter and the comfort letter.

The guarantee letter is an unconditional and definitive commitment through which an issuer, undertakes the obligation, pursuant to the demand from an officer, to pay an amount of money to a beneficiary, in relation to a pre-existing obligation, but independently from it according to the terms of the letter. Unless the parties have stipulated otherwise, the guarantee letter must be entered into upon request solely from the beneficiary.

The comfort letter is an autonomous and definitive commitment through which the issuer undertakes the obligation to do or not to do something in relation to a debtor in order to ensure performance of the debtor's obligations towards their creditor. The issuer cannot oppose the creditor nor seek to take defence or exception to the obligations owed between the creditor and the debtor.

8.3 Taxation on the creation of security

In relation to taxation on the creation of security, it is necessary to distinguish between notarial fees and the fees required for the registration in the Electronic Archive for Security Interests in Movable Property.

Notary fees in cases of complex operations are incurred for each operation. If the notarial documents or procedures are regarding movable assets, the fee is calculated by the application of the rate provided in the published fee tariffs and based on the declared value of the movable asset. For the documents and procedures regarding immovable assets, the fee is calculated based on the declared value. If the declared value is lower than the value established through valuation, the fee will be calculated based on the value provided by a survey.

The notary fees for the establishment or the transfer of the property right and of other real rights differ based on the value of the asset. Fees for assets with higher values are approximately 0.5% of the value of the transfer or establishment of the property. The notary fees for the creation of an immovable mortgage are approximately 0.07% of the value of the secured amount.

Glossary

TERM	EQUIVALENT
Arhiva electronica de garantii reale mobiliare	Electronic archive for security interests in movable property (aergm)
Act autentic	Notarised deed
Coproprietate	Co-ownership
Drept de concesiune	Concession right
Drept de uz	Right of use
Drept de uzufruct	Right of usufruct
Executare silita	Enforcement procedure
Expropriere	Expropriation/compulsory purchase
Fructe (civile, industriale, naturale)	Income obtained from real estate without consuming the property
Ipoteca imobiliara	Immovable mortagage
Ipoteca mobiliara	Movable mortgage
Locatiune	Lease
Oficiul de cadastru si publicitate imobiliara	Office of cadaster and real estate publicity (OCPI)
Producte	Income obtained from real estate via consuming the property
Proprietate devalmasa	Joint ownership
Sarcina	Charge
Servitute	Easement
Societate cu raspundere limitata	Limited liability company (SRL)
Societate pe actiuni	Joint stock company (SA)
Taxa pe valoare adaugta (TVA)	Value added tax (VAT)
Titlu executoriu	Writ of execution

Contact

BUCHAREST
DLA Piper Dinu SCA
Metropolis Center
89 97 Grigore Alexandrescu Str.
East Wing, 1st Floor, Sector 1, 010624
Bucharest, Romania
T: +40 372 155 800
F: +40 372 155 810
www.dlapiper.com

Alin Buftea
Partner
T +40 372 155 807
F +40 372 155 810
alin.buftea@dlapiper.com

Antoine Mercier
Partner
Global Co-Chair, Real Estate
T +33 1 40 15 24 09
F +33 1 40 15 24 01
antoine.mercier@dlapiper.com

About DLA Piper

DLA Piper is a global law firm with offices in more than 40 countries throughout the Americas, Asia Pacific, Europe and the Middle East, positioning it to help companies with their legal needs anywhere in the world. We strive to be the leading global business law firm by delivering quality and value to our clients. We achieve this through practical and innovative legal solutions that help our clients succeed. We deliver consistent services across our platform of practices and sectors in all matters we undertake.

Since November 2008, DLA Piper's office in Bucharest, Romania has supported clients with a strong team of 45 internationally trained Romanian consultants able to handle your most complex legal and tax matters.

The members of our Romanian team have been involved in several headline transactions in the Romanian and the CEE market, benefiting from significant exposure to a wide range of legal and commercial matters. The large number and variety of deals have given them an excellent and comprehensive experience to solve the complexities of their clients' needs.

This guide was written predominantly by Florin Tineghe of our Real Estate practice group.

This guide was prepared in July 2018. Subsequent changes in law are therefore not taken into account. This guide cannot be considered as a substitute for obtaining specific legal advice in individual cases. DLA Piper does not assume any liability in connection with this guide.

Visit www.dlapiperREALWORLD.com – DLA Piper's online guide to international real estate.