Real Estate Investment in the Slovak Republic

THE LEGAL PERSPECTIVE

DLA PIPER

Contents

1. Ownership of real estate

1.1 Full ownership

Under Slovak law, the right of full ownership is the most complete real right. It entitles the owner to full range of property rights, including the right to use, dispose or encumber the property. The rights of full ownership of all owners are equal.

The protection afforded by ownership may be restricted as the owner of a property must not interfere with the rights and legitimate interests of other persons without legal grounds and must not be in conflict with good morals. It reflects several mandatory obligations of the owner of a property; e.g. the owner of a property must not annoy neighbors with direct or indirect emissions such as noise, dust, ash, smoke, gases, vapours, odours, light, shading, vibrations, etc.

The ownership of real estate property is registered in the Land Registry (*kataster nehnuteľností*) which is publicly accessible and provides information on the property, owner, ownership title, size of co–ownership share of each co–owner and rights of third persons to the relevant plot of land, building or other structure.

However, under Slovak law the building does not form a part of the plot of land. It means that buildings and underlying plots of land may have different owners.

1.2 Other rights over real estate

Possession (*držba*) is the right to hold goods and to dispose of them as one's own. Possession can be relevant in terms of the institute of usucaption as it constitutes one of the legal requirements for this type of underived acquisition of ownership right. After a certain period of time elapses (ten years in the case of real estate), the possessor becomes the owner of the property.

Right to lease/sub–lease (*nájom/podnájom*) is the right to let or sublet real estate to a tenant in return for payment.

Right of pledge (*záložné právo*) is the right of a pledgee to satisfy a claim against a pledgor from the security provided their claim is not satisfied adequately and in a reasonable time.

Easement (*vecné bremeno*) is a right to enjoy certain benefits (such as a right of access, a right to build etc.) relating to a third party's real estate. This right either belongs to a specific individual or to the owner of a certain property.

1.3 Condominium

In the Slovak Republic, condominium is regulated by Act No. 182/1993 Coll. on Ownership of Apartments and Non–Residential Premises, as amended. The law regulates the manner and conditions of acquiring ownership of apartments and non-residential premises in the house and the rights and obligations of owners of apartments and non-residential premises.

For this purpose, the house means a building in which more than half of the floor area is intended for living and has more than three apartments, and in which the apartments and non–residential premises are in the ownership or in the co–ownership of the individual owners and the common parts of the house and the common facilities of the house are co–owned by the owners of the apartments and non–residential premises.

The administration of the house is carried out by the community of owners of apartments and non–residential premises in the house or by another legal entity or natural person with whom the owners of apartments and non–residential premises conclude a contract. Owners of apartments and non–residential premises in the house are obliged to ensure the administration of the house by the community or the administrator.

1.4 Restrictions on ownership by foreigners

Foreign individuals and foreign legal entities are allowed to acquire ownership of real estate in the Slovak Republic, including agricultural land and forests. However, there are some exceptions relating to the ownership of real estate where acquisition by foreigners is restricted by special legislation. For example, Act No. 140/2014 Coll. on Acquisition of Ownership of Agricultural Land legislation provides that the ownership of the agricultural land may not be acquired by a country, a citizen of a country, a natural person with residence or a legal entity with its registered seat in a country, whose legislation does not allow citizens of the Slovak Republic, natural persons with residence in the Slovak Republic or legal entities with their registered seats in the Slovak Republic to acquire ownership of agricultural land. This does not apply to inheritance. This also does not apply to the Member States of the European Union, the European Economic Area, Switzerland, and nor to the states, to which is the Slovak Republic bound by an international treaty. This shall not apply to their citizens, nor to natural persons or legal entities residing or having their registered seat in those states.

In general, pursuant to Article 4 of the Slovak Constitution, mineral resources, caves, underground waters, natural healing sources and streams are the property of the Slovak Republic. With regard to the acquisition of property from municipalities or state authorities, a special regulation applies and additional conditions must be complied with. In addition, a special restriction applies in the case of culturally protected real estate. In such cases, the Slovak State has a pre–emptive right on any sale of a building which has the status of a cultural monument. This pre-emptive right of the state ceases to exist if the state is unable to match the offer received by the seller from a third party.

The division of agricultural land into plots of less than 2,000 m^2, and forest into plots of less than 5,000 m^2, is restricted. However, dividing land into plots of less than 20,000 m^2 but not less than 2,000 m^2, in the case of agricultural land, and 5,000 m^2, in the case of forest, means the owner must make certain additional payments, the amount depending on the total area of the land.

1.5 Foreign investment screening

New legislation on foreign investment screening and scrutiny is planned. Foreign investments will be screened for the protection of security and public order of the Slovak Republic and would cover foreign investment from third (non-EU) countries, and EU-seated vehicles operating under foreign control or with foreign funds. The screening of the foreign investment will be performed by the Ministry of the Economy of the Slovak Republic. The draft of new legislation is currently at the stage of evaluation of consultations between governmental departments and the expected effective date is 1 January 2022.

2. Acquisition of ownership

2.1 Formal requirements

Contracts relating to the transfer of real estate must be made in writing and must contain, at a minimum, the following essential requirements:

the identity of the buyer and seller;

- the specification of the real estate;
- the price for which the real estate is being sold; and
- details of the rights and obligations that pass from the seller to the buyer as a result of the transfer of the property.

The signature of the seller on the sale and purchase contract must be verified by a public notary as part of the registration of the transfer with the Land Registry or the respective sale and purchase contract can be authorized by a lawyer.

The sale and purchase agreement must be registered with the Land Registry.

Contracts concluded under the Act on the Ownership of Apartments and Non–residential Premises and the Act on the Leasing and Sub–leasing of Non–residential Premises must satisfy the specific requirements of those Acts, which are even more complex than those applying to plots of land and constructions. This is mainly due to the fact that when a flat or apartment is sold, the co–ownership rights relating to the common areas of the building are also transferred at the same time.

Representations and warranties have become more common. Although their enforceability under Slovak law is questionable, making provision for suitable remedies may decrease the risk connected with a real estate purchase, especially in relation to environmental liabilities.

2.2 Registration

The acquisition of ownership comes into effect when it is registered with the relevant Land Registry. In the case of a transfer of the ownership right to an apartment to a lessee pursuant to the Act on the Ownership of Apartments and Non–residential Premises, once the cadastral administration carries out the registration with the Land Registry, such registration is effective as of the date of receipt of the application for registration by the cadastral administration. Registration is not required for very small or specialized constructions, such as fences, walls, etc.

Under the Cadastral Act, all real estate and most rights over real estate are registered with the Land Registry.

The Land Registry is maintained by district offices.

The following rights should be registered:

- ownership rights;
- mortgages;
- servitudes (or easements);
- pre–emptive rights;
- rights in favor of the government (at state, regional or municipal level); and
- land leases of at least five years (registration is optional).

Information contained in the Land Registry is available to the public. However, documentation submitted to the Land Registry for the purposes of registering real estate rights is only available to a limited extent.

2.3 Asset deals

It is possible to acquire the property directly through an asset deal. In such cases, the seller is the owner of the property and the buyer is the acquirer of the property. Usually, a nominate type of purchase contract is used. However, it is also possible to use innominate contracts.

In relation to asset deals, it is also possible to acquire real estate property which is part of an enterprise by acquisition of such enterprise. Contract on sale of an enterprise is the nominate contract which regulates acquisition of an enterprise. An enterprise is defined as the aggregate of tangible, personal and intangible components of entrepreneurial activity. Items, rights and other property values which belong to the entrepreneur and which serve or, considering their nature, are intended to serve the operation of an enterprise belong to the enterprise.

The legal requirements for the purchase contract vary depending on the object of the purchase contract. If the contract is related to real estate, written form is required. In such case, legalization of signatures is necessary.

Assistance of lawyers is advisable, both in relation to the asset deal itself as well as in relation to the due diligence which might be necessary for the buyer to assess all aspects of the property. Due to the fact that Cadastre information may not be completely reliably when it comes to historical information, an in–depth due diligence is highly recommended in cases of a purchase of a land.

In Slovakia, it is common that negotiations take place before the execution of an asset deal. In such cases, heads of terms may be used as a basis for drafting of the asset deal. Unless otherwise provided by law, it is possible to use exclusivity clauses or confidentiality clauses. Contractual penalties for breach of provisions in asset deals may be used too.

Rights and obligations of the parties depend on the type of contract and type of parties of the contract. In general, the seller shall inform the buyer of all important aspects of the object of the contract (e.g. real estate), defects included.

As to the transaction costs, there is a fee of EUR66 for the registration of the new owner in the Land Registry (EUR33 for registration by electronic means). This fee is EUR266 if the applicant applies for an accelerated registration, which is then usually carried out within 15 days (EUR133 for registration by electronic means). In addition, all of these fees are reduced by EUR15 if a notice of an intended registration is filed. The notarial fee for the verification of a signature varies according to the notary and is in the range of EUR1.50 to EUR3.50. Responsibility for paying these costs depends on what the parties have agreed. As to the related tax, please refer to the relevant section below.

2.4 Share deals

An agreement on the transfer of a business share is regulated in the Slovak Commercial Code. With the consent of the general meeting, a shareholder may transfer their business share to another shareholder, unless the articles of association stipulate otherwise. A shareholder may transfer their business share to a third party if the articles of association allow such transfer. The articles of association may stipulate that the transfer of a business share to a third party requires the consent of the general meeting.

A shareholder cannot transfer their business share to another shareholder or a third party if proceedings for winding up the company are being conducted against the company, if the company has been wound up by a court or under a court decision, if the declaration of bankruptcy or a restructuring permit are in effect against the company, or if the shareholder is registered as a debtor with the Register of Authorizations to Execute Enforcement; the transferee of the business share also cannot be registered with the Register of Authorizations to Execute Enforcement.

An agreement must be made in writing, and signatures attached thereto must be verified. A transferee that is not a shareholder must declare therein that they accede to the articles of association. The transferor shall be liable for the paying up of the investment contribution by the transferee.

2.5 Public auctions

In the Slovak Republic, auctions are regulated by Act No. 527/2002 Coll. on voluntary auctions, as amended. This Act regulates the control of the Ministry of Justice of the Slovak Republic on compliance with the terms and conditions of organizing and conducting auctions, duration and termination of some related legal relationships.

The object of the auction may be an item, a right, another asset that is transferable, a set of items, rights or other assets, an enterprise or part of an enterprise if their auctioning has been proposed and if they meet the conditions laid down by that law.

3. Other rights to property

3.1 Mortgages and charges

Mortgage as a form of a security can be established over each type of real estate. Mortgages shall be registered with the Land Registry. If more than one creditor holds the same security interest over the same real estate, then the order of payment will be dealt with in accordance with the order set out in the mortgage registered with the Land Registry. Therefore, the mortgage of the mortgagee first registered with the Land Registry will be satisfied first from the proceeds of the sale.

Pledge rights and mortgage (in the case of real estate) are established upon a written agreement and are created in the moment of registration with the respective pledge right register – in the case ofreal estate it is the Land Registry.

3.2 Easements

Easement (*vecné bremeno*) is a right to enjoy certain benefits (such as a right of access, a right to build etc.) relating to a third party's real estate. This right either belongs to a specific individual or to the owner of a certain property.

Easements are established by a written contract, on the basis of a last will in connection with the outcome of inheritance proceedings, by an approved agreement of the heirs, or by a decision of a competent authority or by law. A right corresponding to an easement may be also acquired through usucaption. Acquisition of a right corresponding to an easement is subject to registration in the Land Registry.

If a change in circumstances results in a gross disproportion between the easement and the benefit of the entitled person, the court may decide that the easement shall be limited or terminated subject to adequate compensation. If, due to a change in the circumstances, it is not possible to fairly insist on performance, the court may decide that monetary consideration shall be granted instead of such performance.

If a right corresponding to an easement belongs to a specific person, such an easement shall cease to exist at the latest upon the person's death or dissolution.

3.3 Pre–emption rights

Pre–emption rights exist under law and under certain contractual arrangements between parties.

Under the Civil Code, if real estate is co–owned by two or more persons, the existing co–owners have a mandatory pre–emption right to buy the share of any owner who wants to sell. This does not apply if an owner wants to transfer his share of the property to relatives.

A breach of this pre–emption right by one of the co–owners creates what is called relative invalidity. This may be enforced by any co-owners who wish to exercise their pre–emption right within a three–year period from the date the co–owner (invalidly) offered their share to a third party without offering it first to the co-owner concerned.

Pre–emption rights can also be created contractually with specific conditions being included in the purchase agreement.

Pre–emption rights may also stem from special legislation. For example, the Slovak State has a pre–emption right over any real estate classified as being culturally significant, and, under nature conservation legislation, over land in protected areas.

3.4 Promise to sell/ option agreements

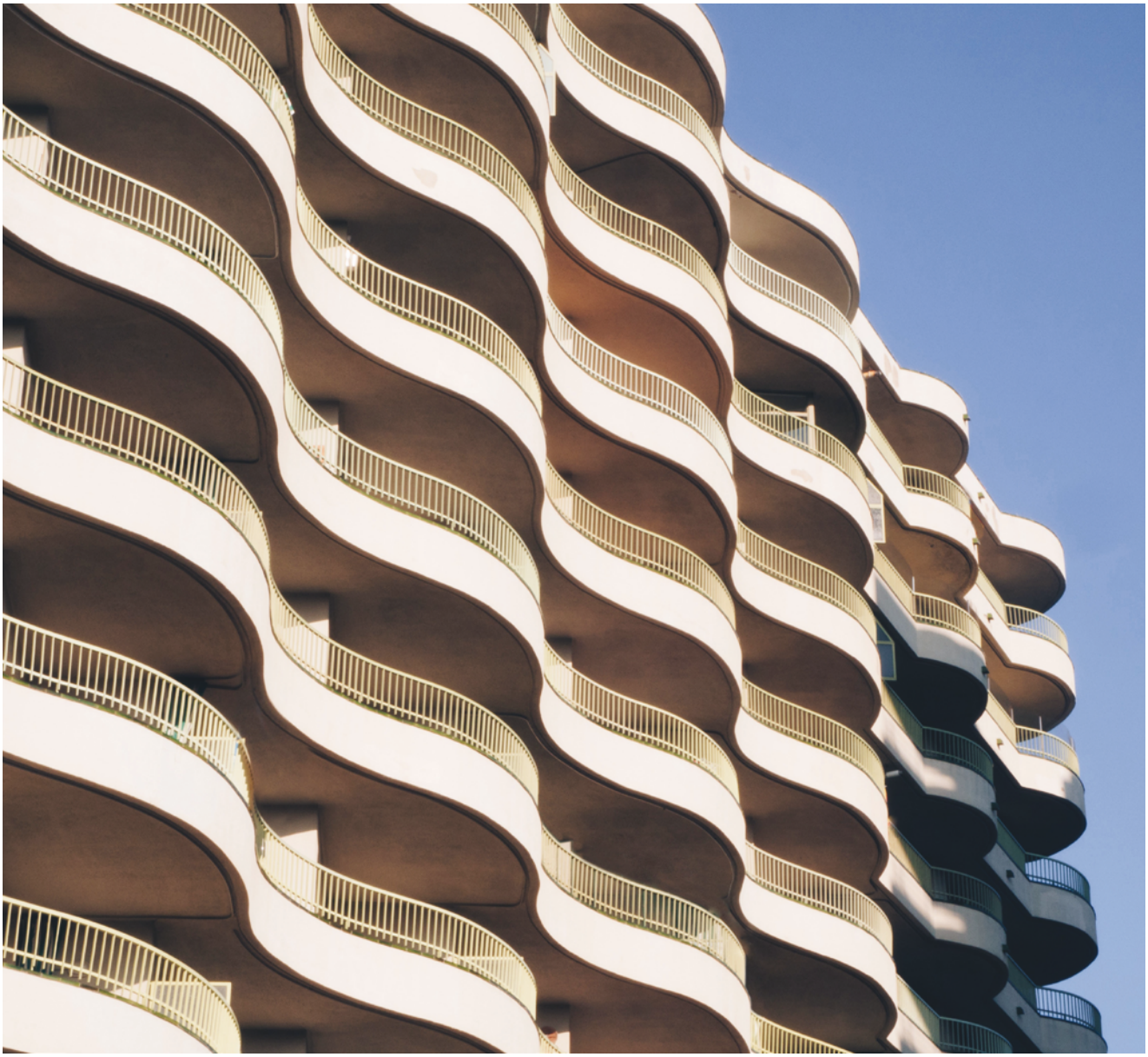
In general, in the business relationships, an agreement on conclusion of a future contract is governed by the Slovak Commercial Code. Under such agreement, one or both contractual parties undertake to conclude a future agreement within a determined period for a subject of fulfilment which is defined at least in a general manner. The agreement shall be in writing.

The obliged party is obliged to conclude the contract without undue delay after it was called on to do so by the entitled party in accordance with the agreement.

If the obliged party does not fulfil its obligation to conclude the agreement, the entitled party may demand that the content of the contract is determined by the court or the party determined in the agreement, or may demand compensation of damage caused by breach of the obligation to conclude the agreement.

The claim to compensation of damage, in addition to the determination of the content of the contract, may be demanded by the entitled party only if the obliged party unjustifiably refused to discuss the conclusion of the agreement. The obligation to conclude the future agreement expires if the entitled party does not call on the obliged party to fulfil this obligation within the period determined in the agreement on conclusion of a future contract.

The obligation to conclude the future agreement or supplement the missing content of the agreement also expires if the circumstances to which the parties clearly referred when this obligation was established have changed to such a degree that it may not be reasonably required of the obliged party to conclude the agreement. However, expiry shall occur only if the obliged party notified the entitled party of this change of circumstances without undue delay.



4. Zoning and planning law permits

Strategic zoning/planning in Slovakia is governed by a combination of acts, subordinate legislation and policy. The law and policy is contained in primary legislation (mainly in the Building Act), secondary legislation and regional and local urban studies, and land-use/zoning plans[1].

The basic tool of land development and environmental care is the zoning documentation. This documentation addresses the spatial arrangement and functional use of the land, harmonizes the interests and activities affecting land development, the environment and ecological stability and establishes the directions of spatial arrangement and the functional use of land. Land–use/zoning documentation is elaborated on at national and regional level and for municipalities and parts of municipalities.

Planning legislation deals with the arrangement and functional use of land. It lays down principles of planning and it proposes the development of land and landscape

The process for obtaining permission for development or carrying on a new designated use can be divided into three phases:

i. applying for the issuance of a zoning permit – pursuant to the Building Act, a zoning permit is not required in a number of defined cases, such as small buildings, maintenance of buildings or telecommunication constructions. Please note that the zoning permit is granted for a limited period of time (usually two years);

ii. applying for the issuance of a building permit – the Building Act lists developments where the issuance of a building permit is not required and a regime of notification to the relevant building office or an unrestricted regime will apply. If the building permit regime applies, a developer must apply for a building permit as is the case with a refurbishment or alteration works or maintenance works to the building; and

iii. applying for the issuance of an occupancy certificate.

As regards the validity of the above–mentioned administrative decisions, the construction work, development works or maintenance works must commence within two years from the date of issue of the building permit, unless the relevant building office stipulates a longer period within which work must commence. Once such periods of time have elapsed without work being commenced, the building permit becomes invalid and a new license must be obtained for completing the works.

There is no duration for the validity of the permission to develop a designated use. The use permitted by an occupancy permit has no limit in time if the activity is developed in accordance with the details of the project submitted for the obtaining of the permit. If those details change or a designated use changes or is expected to be changed, it is necessary to obtain a new occupancy permit and where necessary, in relation to construction works, apply for the building permit.

[1] For the sake of completeness, note that Slovak zoning and planning legislation has been under review and a new legislation is expected to be adopted in 2021. The new Act on Land Use Planning and the new Construction Act should as of 01.01.2023 replace in their entirety the current Building Act adopted in 1976.

5. Environmental liability

The legal basis of environmental liability is in the Slovak Constitution and called the right to the protection of the environment and cultural heritage. No one may endanger, or damage the environment or natural resources beyond the extent laid down by law. Further, everyone has the right to timely and complete information about the state of the environment and about the causes and consequences of its condition. As regards the law regulating the environment, there are various laws relating to protection of nature, and air, water or waste management.

Territory must not be burdened by human activity beyond the carrying capacity. Everyone is obliged, in particular by taking measures at source, to prevent environmental pollution or damage and to minimize the adverse environmental effects of their activities.

Anyone who discovers that the environment is threatened by damage or a damage has occurred shall take the necessary measures to mitigate the consequences and to report these facts to the public authority without delay. This shall not apply to a person who would endanger their life or health or life or health of a another person.

A construction project that is likely to have a significant effect or impact on the environment by virtue of factors such as its nature, size or location may require an environmental impact assessment before a zoning permit is granted.

6. Leases

The types of lease used in Slovakia are:

i. general leases under the Civil Code which applies unless specific legislation overrides it; and

ii. specific types of lease pursuant to the Act on Short–term Apartment Leasing in the case of an apartment lease for a term of less than six years, lease pursuant to the Act on Leasing and Subleasing of Commercial Premises or lease pursuant to the Leases of Agricultural Land and Forests Act.

6.1 Duration

Generally, the parties are free to contract as they wish. As regards commercial leases, the Leases of Agricultural Land and Forests Act in some particular cases lays down minimum or maximum terms. The maximum length of short–term apartment leases under the Act on Short–term Apartment Leasing is six years. Leases of land for five years or more must be registered with the Land Registry.

6.2 Rent

Generally, the parties are free to contract as they wish. In the case of a commercial lease, it is common to provide for the indexation of the rent so that it is linked to the rate of inflation. Further, the parties are free to review the rent. Nevertheless, the most common method of indexation is to link the rent to the rate of inflation through, for example, the Consumer Prices Index published by the Slovak Republic's Bureau of Statistics. A lease of non–residential premises also normally provides for the landlord to increase the rent if the costs of operating the building increase.

Leases of real estate are exempt from VAT, apart from leases of certain types of facility, such as short–term accommodation (for example hotels), parking lots and secure deposit facilities. However, a taxpayer who leases property or a part of it to a taxable person may decide not to have the lease exempt from VAT.

6.3 Operating expenses

The cost of utilities, such as energy, water, sewage etc., is generally paid by the landlord and the tenant pays a proportion of these costs, calculated according to the size of the leased premises.

6.4 Maintenance, repair and renovation at lease termination

The landlord is obliged to maintain the property (whether residential or commercial) in good condition to enable its normal or agreed use, although in the case of commercial premises it is open to the parties to agree otherwise. A tenant of commercial premises is obliged to cover the costs of normal maintenance. The tenant is also obliged to notify the landlord without unreasonable delay when the need for any repairs arises, otherwise the tenant may be liable for any resulting damage. The tenant is responsible for the costs of minor repairs and any other are the responsibility of the landlord, unless stated otherwise in the contract.

However, the landlord's consent is required before any changes are made to the property, otherwise the tenant will be required to restore the property to its original condition at the end of the lease. If the tenant has made alterations without the landlord's consent which may result in significant damage, the landlord is entitled to terminate the lease.

The tenant may be able to claim a reimbursement of any costs incurred in relation to alterations if the alterations were approved by the landlord and the landlord agreed to cover the costs. Alternatively, upon the termination of the lease, the tenant may be able to claim from the landlord the amount by which the property has increased in value as a result of the alterations made, if these were approved by the landlord, but the landlord did not cover their cost.

In some specified cases, the alteration and improvement of real estate can be restricted by special legislation (such as in the case of culturally protected real estate).

6.5 Assignment/transfers

If the tenant dies and the flat is not in the joint lease of spouses, then their children, grandchildren, parents, siblings, son–in–law and daughter– in–law who lived with the tenant in a common household on the day of their death and do not have their own flat or persons who took care of the common household of a deceased tenant or were dependent on him for subsistence, if they lived in the same household with him at least three years before his death and do not have their own flat, shall become the tenants (joint tenants).

If the landlord assumes that the conditions for the transfer of the flat have not been fulfilled, the landlord may ask the court to determine that there was no transfer of the lease within three months of the day when the landlord became aware of this, but at the latest within three years from the day of the tenant's death.

6.6 Subleases

In general, the tenant is entitled to sublet the property unless agreed otherwise in the contract. However, a written the consent of the landlord is required for subletting a leased apartment. According to the Act on Leasing and Subleasing Commercial Premises, a tenant can only sublet non–residential premises with the landlord's written consent, and only for a limited period of time.

6.7 Termination

A lease of a flat shall be terminated by written agreement between the tenant and the landlord or by a written notice.

If the lease of a flat was agreed for a definite period of time, it shall also terminate upon the expiry of such a period. If a written notice has been given, the lease of the flat shall terminate at the expiry of the period of notice. The period of notice is three months and shall commence on the first day of the month following the month the tenant received the notice. The landlord may set out a longer period of notice for the tenant in writing.

The landlord may terminate a lease of a flat only upon the reason stipulated under the law. These reasons may be:

i. the landlord needs the flat for themself, their spouse, children, grandchildren, son–in–law or daughter–in–law, parents or siblings;

ii. the tenant severely damages the leased flat, or constantly disturbs the peaceful dwelling, endangers safety, or violates good morals in the house;

iii. the tenant grossly violates their obligations arising from the lease of the flat, in particular by a failure to pay the rent or by sub–letting the flat to a third party without the written consent of the landlord; or

iv. the tenant uses the flat for purposes other than dwelling without the consent of the landlord.

6.8 Sale of leased property

If a change in the ownership of leased property occurs, only the tenant may terminate the lease agreement under such grounds even if the agreement was made for a definite period of time. The tenant shall give notice in the nearest notice period if such a period is stipulated by law or by the agreement.

7. Tax

In this section we will summarize the main tax-related aspects of real estate investment in the Slovak Republic. An understanding of the Slovak tax regime is crucial in determining the likely profitability of an investment and in structuring the investment to be as tax efficient as possible. In general, the investor can structure its investment as a direct investment in Slovak real estate or via a Slovak holding company, and these methods differ significantly from a tax law perspective. This differentiation is relevant throughout this section. This overview follows the stages of an investment beginning with tax liability on the acquisition of real estate and finishing with the taxes due on disposal.

Please be informed that this section provides only a very general and brief summarization of the matter.

7.1 Transfer taxes

The acquisition of real estate as such is not subject to taxation. However, the income from transfer of real estate is subject to taxation, unless conditions for tax exemptions are met. These exemptions apply to natural persons. The income is taxed in the tax period when the income was acquired, irrespective of the date of acquisition of real estate. The expense for the tax purposes is, among others, the price of real estate at the time of acquisition. The tax exemption applies, among others, to inherited real estate acquired or real estate owned for five years.

The income from transfer of real estate owned by a legal person is taxed.

The general tax rate for income is 19% (but 25% on that part of the income which exceeds 176.8 times the current subsistence level as prescribed by the government) for natural persons or 21% for legal entities. A reduced tax rate for income 15% applies to taxpayers who achieved taxable income not exceeding the amount of EUR49.790 in the taxation period (applicable to both natural persons and legal entities); the reduced rate may not be applied to income generated from the transfer of real estate.

7.2 Value added tax

Structures, including building land, are exempt from VAT e.g. if the transfer of the property takes place more than five years after:

(a) the issue of the occupancy permit, which allowed the first use of the construction for its intended purpose or after five years from the date of the first usage of the construction, whichever occurs first;

(b) the issue of the occupancy permit, which allowed a change in the purpose of use of the construction, which occurred as a result of the construction works, if the costs of these works are at least in the amount of 40% of the value of the construction before the commencement of construction works;

(c) the issue of the occupancy permit, which allowed the usage of the construction after the construction works have been made, as the result of which there was a substantial change in the conditions of the previous use of the construction.

However, the VAT payer can also opt for the transaction to be subject to VAT.

If the taxpayer provides a part of the construction, which is an individual flat, individual apartment, or individual non-residential premises the provision is exempt from VAT if it's made after five years from the date of:

(a) the issuance of the occupancy permit, which allowed the first use of the flat, apartment, or non-residential premises or after five years from the date of the first use of the flat, apartment, or non-residential premises, whichever occurs first.

(b) the issuance of the occupancy permit, which allowed a change in the purpose of use of the flat, apartment, or non-residential premises, which occurred as a result of the construction works, if the costs of these works are at least in the amount of 40% of the value of the flat, apartment, or non-residential premises before the commencement of construction works.

(c) the issuance of the occupancy permit, which allowed the use of the flat, apartment, or non-residential premises after the construction works have been made, as the result of which there was a substantial change in the conditions of the previous usage of the flat, apartment, or non-residential premises.

Land, other than building land, is always exempt from VAT. A VAT rate of 20% is the general VAT rate.

7.3 Other real estate taxes

Real estate tax consists of taxes on land, buildings, flats and non-residential premises.

The tax on land is imposed on plots recorded in the Land Registry and is payable (subject to certain statutory conditions) by the person who owns, uses or rents the property. The basis for tax on arable land, hop yards, vineyards, meadows, pastures and orchards is the land value. This is defined as the size in m^2 multiplied by the value per m^2. In general, this is also the basis for calculating tax on commercial forests and ponds used for fish farming, as well as for gardens, built–up areas, courtyards and other grounds. The annual tax rate for land is 0.25% of the tax valuation. This can be varied by the tax administration body (for example, the relevant municipality).

The object of tax on buildings is any building used for living, agricultural production, industrial purposes etc. The building tax rate is EUR0.033 per each even initiated m^2 of built–up area. The annual tax rate on buildings can be increased or decreased by the relevant tax administration body. They can also levy a supplement for every floor situated above first floor level, although the maximum amount of the supplement shall not exceed EUR0.33 per each additional floor except for the first floor. The tax administration body sets different annual tax rates for particular types of buildings. The maximum annual tax rate on any class of building is ten times the lowest annual tax rate on buildings set by the tax administration body.

The annual tax rate on flats and non–residential premises is EUR0.033 per each even initiated m^2 of the floor area of the flat or non–residential premises. This can be varied by the appropriate tax administration body. The maximum annual tax rate on flats and non-residential premises is ten times the lowest annual tax rate on flats and non–residential premises set by the tax administration authority.

Rates in the Slovak Republic vary according to the type of land and its locality. Bratislava, as a rule, has higher rates of taxation per m^2.

7.4 Taxation of rental income from real estate

The taxation of rental income from real estate is different as between partnerships and corporations.

Since a partnership is considered to be transparent for income tax purposes, any profits generated by the partnership are deemed to be the profits of each individual partner and are therefore treated as personal income. Tax is payable on rental income, less any tax-deductible expenses (for example depreciation, administrative costs and financial charges). The tax rate is 19% (but 25% on that part of the income which exceeds 176.8 times the current subsistence level as prescribed by the government). Where the partner is a legal entity, a tax rate of 21% applies.

If taxation of rental income from real estate of a company (a non-transparent entity) is at stake, tax is payable on rental income, less tax deductible expenses (for example depreciation, administrative costs and financial charges). The corporate income tax rate is 21% or 15% (only for a taxpayer who has achieved taxable income which does not exceed the amount of EUR49.790). These taxes can be reduced by what is known as book depreciation. With the exception of land, most tangible assets are depreciable. The basis for depreciation is generally the original acquisition cost, and the depreciation rate is usually based on the normal useful life of the asset. Slovak tax legislation also allows for interruption of tax depreciation.

7.5 Taxation of dividends from a company owning real estate

If an investor has invested through a partnership (which is treated as transparent for income tax purposes) income will be taxed as part of the partner's personal income.

If an investor has invested through a company, income can be transferred by the distribution of dividends to shareholders. Dividends paid to individuals are subject to income tax in cases where the profit shares are paid for the tax period starting as of January 1, 2017 and later.

The tax rate of 7% or 35% depends on to whom the dividends are paid. The rate also depends on the location (non–contracting state, contracting state or the Slovak Republic) of the entity paying the dividends. If the dividends are paid to or received from a taxpayer from a non-cooperating state[2], a specific withholding tax rate of 35% will be applied. Dividends paid to foreign taxpayers of non-contracting states are also subject to taxation. This dividend will be paid to the foreign taxpayer at a withholding tax rate of 35%.

If the recipient of the dividends is a tax resident of a state with which the Slovak Republic has concluded a Double Tax Avoidance Treaty or a Treaty on Exchange of Information for Tax (contracting state), it takes precedence over the Income Tax Act. The right to taxation of dividends is determined on the basis of the provisions of the international treaty. Under double–tax treaties dividends may be taxed either in the country where the company is based or in the shareholder's country of residence.

Where a Slovak company pays out the dividends (for the tax period starting as of January 1, 2017) to individuals who are residents of another member state or contracting state, the dividends will be taxed in accordance with the specific Double Tax Avoidance Treaty.

Profit shares paid between legal entities from states other than non–contracting states are exempted from the income tax. That means that dividends paid by a Slovak company to Slovak legal entities or to companies from the contracting states shall not be subject to income tax in Slovakia. Similarly, dividends are not taxed in Slovakia, when Slovak companies received the dividends from the company from the contracting state or from Slovakia.

7.6 Taxation of capital gains on real estate

Income gained from the sale of real estate is subject to income tax and, in some cases, to VAT. For more details on VAT, please refer to the relevant section above.

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

Regarding the taxation of capital gains from disposal of shares in a company owning real estate, income from a transfer of shares in a company owning real estate is, in general, subject to taxation. General tax rates applies, i.e. in relation to a natural persons, a tax rate is 19% (but 25% on that part of the income which exceeds 176.8 times the current subsistence level as prescribed by the government); in relation to a legal entity, a tax rate of 21% applies.

[2]A taxpayer from a non-cooperating state is a natural person or legal entity who is not residing in one of the states listed in the list of states published on the website of the Ministry of Finance of the Slovak Republic. This list includes those states, with which the Slovak Republic has concluded a Double Tax Avoidance Treaty or a Treaty on Exchange of Information for Tax. The Ministry of Finance of the Slovak Republic shall remove from this list a state which:

(a) is included in the European Union list of non-cooperating states for tax purposes published in the Official Journal of the European Union, or

(b) does not apply a corporate income tax, or

(c) applies a zero corporate income tax rate.

8. Real estate finance

The most common securities in Slovak real estate financing are the following:

i. a mortgage over the real estate being the subject of the financing;

ii. an assignment of receivables arising out of contracts;

iii. a bank guarantee; and

iv. a pledge over receivables on the bank account or a pledge over receivables resulting from contracts.

8.1 Assets held as security

The Civil Code defines real estate as plots of land and buildings, which are connected to the ground by a solid foundation. Premises such as apartments and commercial and office space are also considered real estate.

Slovak law does not recognize the principle of superficies solo cedit (which means that ownership of a building is considered inseparable from ownership of a plot of land beneath it). Therefore, a building is not part of a plot of land on which it stands. Consequently, the owner of a building can be a different person from the owner of a plot of land beneath the building.

Mortgage as a form of a security can be established over each type of real estate mentioned above. However, a mortgage shall be perfected by registration with the respective Cadastral Registry.

8.2 Further collateral agreements

Secured debt can be traded between lenders. The Civil Code regulates the institute of assignment of a claim, where a creditor may assign their claim against a debtor to another party by means of a written agreement. The assignment includes accessories and all rights connected with the claim. The debtor's consent to the assignment is not required in order for the agreement to become valid. The creditor shall notify the debtor of the assignment without delay. Unless the creditor has notified the debtor of the assignment or unless the new creditor proves the assignment to the debtor, the debtor can perform its obligations to the original creditor.

A bank guarantee is established by written declaration of the bank in a guarantee certificate that the bank shall satisfy the creditor up to the amount of a certain financial sum according to the content of the guarantee certificate if a certain third party (debtor) does not fulfil a certain obligation or if other conditions determined in the guarantee certificate are fulfilled. The bank guarantees fulfilment of the secured obligation up to the amount of the sum and under the conditions determined in the guarantee certificate. The bank shall fulfil its obligation from the bank guarantee only if it is called on to do so in writing by the creditor. If the bank's fulfilment from the bank guarantee is conditional in the guarantee certificate upon the submission of certain documents, these documents must be submitted during such call or without undue delay after it. Otherwise, the provisions on guaranties shall apply accordingly to a bank guarantee.

A pledge over a receivable shall also apply to interests and other appurtenances of the receivable. A pledge over receivable shall be effective towards the debtor of a pledgor (the debtor) only if the creation of the pledge is notified by the pledgor in writing to their debtor, or if the pledgee proves the creation of the pledge to the debtor; an extract from the Register of Pledges shall be sufficient to prove the creation of the pledge. If the creation of the pledge is notified or proved to the debtor, the debtor shall fulfil their pecuniary obligation to the pledgee or another person appointed by the

pledgee. The pledgee shall notify the pledgor in writing that the pecuniary obligation of the debtor has been fulfilled. If the pecuniary performance of the debtor received by the pledgee exceeds the secured receivable, the pledgee shall hand over to the pledgor the pecuniary performance that exceeds the secured receivable without undue delay, after deducting the necessary and reasonable costs connected with the exercise of the pledge.

8.3 Fees on the creation of security

There is no stamp duty that arises following the creation of a security interest. Mortgage shall be perfected by registration with the respective Land Registry. The basic fee for the registration is EUR66, and the registration must take place within 30 days following the creation of the mortgage. If the applicant files for an accelerated registration within 15 days from the filing of the application for registration with the Land Registry, the registration fee amounts to EUR266.

Moreover, there is a possibility to file for the registration of the mortgage electronically. In such a case, the basic fee reduces from EUR66 to EUR33 and in the case of an accelerated registration procedure from EUR266 to EUR133.

All of these fees are reduced by EUR15 if a notice of an intended registration is filed.

In addition, notarial fees must be paid for the verification of the signature of the transferor on the agreement for the transfer of the ownership right. The price varies according to the notary and is in the range of EUR1.50 to EUR3.50.

The costs related to the enforcement of security also have to be taken into consideration, but the amount of such costs depends on the means of enforcement of the security.

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