

# Romania

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## THE CORPORATE REAL ESTATE MARKET

### 1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

#### Overview

In the last 12 months, the effects of the global economic crisis became more visible in Romania and one of the most affected sectors was real estate. Buyers and tenants currently control the real estate market, as they hold a stronger position in negotiations, which allows them to have greater control over prices.

However, Romania still offers a wide range of real estate opportunities, since many areas require development to reach EU standards. Transactions are still concluding, though their number and value have decreased compared to previous years.

#### Leisure

New shopping centres and malls have continued to open. In Bucharest, these include:

- AFI Palace Cotroceni, developed by AFI Europe, one of the most important real estate investors in central and south-east Europe.
- Sun Plaza, developed by EMCT Romania si Sparkassen Immobilien AG (the oldest Austrian real estate company).

#### Leases

In the lease market, the most common transactions involved office properties. The most significant transaction involved a lease by Banca Romaneasca (member of National Bank of Greece group) of a 15,000 square metre area in the BOC Tower, which is located in North Bucharest and owned by RREEF Real Estate. As of the end of 2009 to the beginning of 2010, public authorities decided to relocate their headquarters, including the following moves in Bucharest:

- General City Hall moved its headquarters into rented premises measuring over 12,000 square metres.
- 1st District City Hall moved into a space exceeding 6,000 square metres.

#### State house-buying programme

The state has shown its capacity to help individuals to access funds and obtain secured credit. The first house-buying programme was launched by the government in 2009 and is currently ongoing. The programme is aimed at young families who do not own a house and is intended to guarantee the loans agreed for the purchase or construction of their first home.

#### Infrastructure

One of the most important real estate investment areas is infrastructure, in which Romania still requires substantial investment.

To further develop infrastructure, at the end of 2009, the Ministry of Transport and Infrastructure took over 42 kilometres of road forming part of the Transilvania Highway (developed by Bechtel International Inc). In addition, during the past year, expropriation procedures began nationwide as preparatory works for all kind of infrastructure developments, such as highways, national roads and ring roads.

In January 2010, the Ministry of Transport and Infrastructure assigned construction works related to the Comarnic–Brasov highway to the Vinci-Aktor consortium. However, the contractor did not succeed in obtaining the relevant financing for the project and exited the agreement. Consequently, a new public bid is expected to construct this part of Transilvania Highway. Another project that is a priority for the government is the Pitesti-Sibiu Highway, which is a development investment for four trans-European roads of transportation, which will be completed with railway construction works.

## REAL ESTATE INVESTMENT

### 2. Please briefly outline the opportunities for investing in real estate in your jurisdiction. In particular, consider:

- The structures commonly used (for example, property companies and partnerships).
- Are real estate investment trusts (REITs) available? If so, are they commonly used?
- Institutional investors.
- Private investors.

From an economic point of view, the Romanian real estate market is considered far from maturity and saturation and therefore provides wide investment opportunities. Foreign investors tend to develop office, retail and infrastructure projects, while local investors are mostly involved in residential projects.

Most deals involve direct acquisition of real estate by special purpose vehicles. Only a minor number of transactions are structured as share deals by acquiring an interest in companies owning real estate. Also, it has become common practice for foreign investors to enter joint venture partnerships with Romanian investors, with the Romanian investors providing a contribution of land or buildings and the foreign investors bringing finance and development know-how. Recently, a new mechanism has been used, which involves the absorption of a real estate owner company and a further infusion of equity.

Most real estate investors are private entities, but since the establishment of private pension funds, institutional investors are expected to become market leaders. REITs are not specifically

regulated in Romania, and companies with a similar profile enjoy no preferential fiscal treatment.

## REAL ESTATE LEGISLATION

### 3. Please briefly set out the main real estate legislation that applies in your jurisdiction.

The real estate system is mainly regulated by the following legislation:

- The Romanian Civil Code 1865, as amended and supplemented.
- Land Law No. 18/1991, as republished, amended and supplemented.
- Law No. 50/1991 on development of construction works, as republished, amended and supplemented.
- Law No. 7/1996 on cadastre and real estate publicity, as republished, amended and supplemented.
- Law No. 1/2000 on the reconstitution of the ownership of agricultural and forestry lands claimed under Law No. 18/1991, as amended and supplemented.
- Law No. 10/2001 on the legal regime of the properties abusively taken over by the State between 6th March 1945 and 22nd December 1989, as republished, amended and supplemented.
- Law No. 350/2001 on territorial planning, as amended and supplemented.
- Law No. 422/2001 relating to the protection of historical sites, as republished, amended and supplemented.
- The Romanian Constitution 2003.
- Law No. 571/2003 approving the Fiscal Code, as amended and supplemented.
- Government Emergency Ordinance No. 195/2005 on environmental protection, as amended and supplemented.
- Law No. 247/2005 on the reform of property and justice, as amended and supplemented.
- Law No. 312/2005 regarding land acquisition by foreign citizens and stateless individuals, as well as by legal entities of foreign nationality.

## TITLE

### 4. Please briefly state what constitutes real estate in your jurisdiction. Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Real estate is defined as:

- Land.
- Buildings erected on land.
- Fixtures attached to the buildings.

Land and buildings on it are registered together.

### 5. How is title to real estate evidenced, for example by registration in a public register of title? Which authorities manage the public title register?

Generally, title to real estate must be evidenced in writing. However, if an interest in land is conveyed or established, title must be authenticated by a notary public. Failure to comply with this formality makes a land title void. It is also recommended that real estate titles (except for those over just land) have a certified date.

For third party notice purposes, real estate is registered in individual real estate public registries (*carti funciare*), which are set up in each locality. This is usually done by the notary public authenticating the title. Real estate is recorded by reference to its location, not its owner.

The territorial offices for the cadastre and real estate publicity maintain the real estate public registries, under the co-ordination and supervision of the National Agency for the Cadastre and Real Estate Publicity.

Under the new Civil Code (expected to come into force shortly), registration with real estate public registries will no longer be performed for third party notice purposes, but to confirm valid ownership.

### 6. Please briefly set out the information and documents registered in the public register of title, for example a description of the real estate, the owner, matters affecting the title and any relevant documents.

The real estate publicity system was created to record with individual real estate registries all legal deeds and facts related to real estate. Each individual real estate registry makes reference to a title, indicating the registry's identification number and the locality where the real estate is located, as well as three main parts:

- Part I: containing the description of the real estate (components, such as land, buildings, surfaces and destinations and an individual cadastral number for each component).
- Part II: evidencing the name of the owner, the ownership title over the real estate, related easements, as well as other registrations related to the ownership title.
- Part III: referring to rights temporarily granted to third parties (such as occupancy, easement or usufruct (that is, the right to use something belonging to another and to benefit from its proceeds), encumbrances, liens, information concerning litigation and/or personal prohibitions).

### 7. Can confidential information or documents be protected from disclosure in the public register of title?

Generally, the real estate publicity system is a public system. Deeds registered with the land book are public and any interested person can consult them. However, records of national security interest are exempt from public access.

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**8. Is there a state guarantee of title? Is title insurance available? If so, is it commonly used?**

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The Romanian Constitution expressly provides for the guarantee of private property and equality of treatment for real estate interest holders. Accordingly, amendments to property interests can be made only in strict cases provided by law, and only with prior and fair indemnification.

The use of indemnity insurance against financial loss from defects in title to real property is increasing. The current legal framework does not expressly regulate title insurance and therefore insurance companies do not offer these products. However, considering its advantages, it has become common for title insurance to be concluded by Romanian entities under foreign law with foreign specialist insurance companies. Recently, international insurance companies (such as First Title CEE and Stewart Title Insurance) have started to show an interest in expanding their business in Romania. It is reasonably expected that the expansion of this product in the national market will overcome the legal risks in real estate transactions.

(In addition, Law No. 260/2008 on the mandatory insurance of dwellings against earthquakes, floods and earth slides, was implemented in July 2010.)

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**9. How can real estate be held (that is, what types of tenure exist)?**

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Real estate ownership rights can be public or private. Public property assets have a different legal regime and therefore they cannot be sold, pledged, mortgaged or encumbered in any other way. Deeds executed without observing the legal provisions applicable to the public property regime are null and void by law. Real estate can be held on a sole or on a joint basis. Joint ownership can be in two forms:

- The common form is where the ownership quotas are known from the date when the ownership right was gained and the respective holder is qualified as being a quota holder co-owner (*proprietate comuna pe cote parti*).
- The second form is specific to the status of property acquired during marriage, each spouse holding a joint interest in the ownership, but with an uncertain quota, which is to be determined only at the end of the marriage or, in certain specific cases, on demand of creditors (*proprietate comuna in devalmasie*).

Ownership rights are viewed as an appropriation of an asset allowing its holder to possess, use (including benefitting from its proceeds) and dispose of the asset on his own behalf and in his own interest. The concept of a freehold interest from common law systems has no equivalent in Romania. Freehold is more similar to usufruct than to ownership rights, which are regulated under the Civil Code.

Leaseholds are used in Romania, where the right to use an asset can be transferred to another person for a limited period in exchange for rent. The leaseholder holds the asset in his own interest, but on the behalf of the actual owner. Easements and usufruct are not ownership rights, but real rights relating to the use of an asset.

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**SALE AND PURCHASE OF REAL ESTATE**

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**10. What are the main stages and documents in the sale and purchase of real estate? In particular:**

- How is real estate marketed, when does commercial negotiation occur and what pre-contractual arrangements are used?
- When is the sale contract negotiated and executed?
- When are the parties legally bound?
- When is the change of title registered?
- When does title transfer and what are the formal legal requirements to transfer real estate (for example, in writing and signed by the parties)? Is notarisation required?

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**Marketing**

Major deals are marketed through real estate agencies or, in certain cases, through professional marketing companies.

**Commercial negotiation**

Usually, the commercial terms represent the starting point for negotiations. Consequently, until these are finalised, no binding agreement is usually concluded.

**Pre-contractual arrangements**

For transactions where terms are not completely agreed on at the initial stage or if the sale is not currently possible or desirable, but the parties still intend to complete a binding promissory agreement, pre-contractual arrangements are often used. Therefore, most promissory agreements contain various types of conditions precedent (for example, obtaining a favourable due diligence report, obtaining corporate or other types of approvals, fulfilling certain mandatory prior requirements or settling certain unclarified situations). When pre-contracts refer to the conveyance of real estate, these do not need to be concluded in notarised form. However, in practice, most real estate promissory sale and purchase agreements are executed in authenticated form.

**Sale contract**

If there is no need for pre-contractual arrangements or on fulfilment of potential conditions precedent, the parties conclude a written sale and purchase agreement, negotiated freely between them. The deed under which ownership over land is conveyed must be authenticated by a notary public. However, the agreement must include, under the sanction of being rendered null and void, information on the identity of the parties, the identification of the real estate and the value of, or determination criteria for, the purchase price. The representatives of the parties are required to have special notarised powers of attorney enabling them to act in the name and on behalf of the parties. As an exception, directors of commercial companies do not need powers of attorney, since they act in their capacity as statutory representatives, under the articles of association or through corporate decisions.

**When legally binding**

A sale and purchase agreement becomes legally binding between the parties once signed by both parties and, for land interest transfer, once authenticated by the notary public. A promise to

sell or buy real estate (at an agreed price, either fixed or capable of being determined at a later stage), contained in a promissory sale agreement (see above, *Pre-contractual arrangements*), becomes binding from signing. If one party refuses to execute the sale and purchase agreement, the competent court of law is entitled to issue a binding decision replacing the sale-purchase agreement, therefore transferring the ownership right over the real estate.

### Registration

Generally, the ownership transfer can be recorded at the time it becomes effective. However, in certain cases provided by Law No. 7/1996 (for example, ownership transfer affected by a condition precedent or ownership acquired based on a court decision that is not final), the registration formalities with the land book can be provisionally made even before ownership transfer actually takes place.

### When title transfers

Unless otherwise provided in the sale and purchase agreement, the transfer of the ownership right occurs on the date when the will of both parties is met, which is by law, assumed to take place on the signing date.

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#### 11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate, for example to disclose real estate information, or in relation to title?

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Under the Civil Code 1865, a person acquiring the ownership interest in real estate by means of a sale and purchase agreement has a specific warranty against the seller, that is, the eviction warranty (*garanția pentru evicțiune*), that can be subject to limitation by the parties' agreement. Eviction covers the partial or total loss of ownership over the acquired asset, as well as any disturbance in exercising the related prerogatives of the ownership right. These warranties refer to both acts of the seller and third parties against the buyer (in relation to third parties, the warranty only refers to legal deeds/actions).

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#### 12. Please briefly outline the real estate due diligence that is typically carried out before an acquisition (including title investigation and searches of public authorities).

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A title due diligence report consists of legal analysis of the ownership titles, outlining relevant issues concerning the ownership chain over real estate. This mainly covers the legal compliance of these documents on execution/issuance, and the proposed remedies, if necessary.

Generally the legal analysis relies on the information and documents provided and no supplementary investigations are performed by law firms, unless expressly required by the client.

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#### 13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover?

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The standard warranties mainly refer to ownership rights over real estate, but can also refer to other issues on the legal or actual status of the real estate, such as:

- Peaceful possession.

- Lack of encumbrances, liens, burdens or third party rights of any kind.
- Lack of proceedings, claims or disputes in relation to the real estate.
- Compliance with cadastral or other applicable regulations.

Further, since corporate real estate business involves commercial companies, warranties are often expressed in relation to the validity and enforceability of the relevant corporate approvals for the seller/buyer.

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#### 14. Can an owner or occupier inherit liability for matters relating to the real estate even if they occurred before it bought or occupied it? For example, environmental liability, or liability under a lease.

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Liability relating to real estate can be transferred to an owner or occupier, even if it occurred before acquisition or occupation. This includes environmental liability, when a new owner must observe the environment obligations, if any, particularly for historical pollution when a conformation plan should be observed. The conformation plan is part of the environmental authorisation and consists of the measures necessary to fulfil environmental protection requirements.

A lease agreement can be transferred to the new real estate owner if concluded in authenticated form or bearing a certified date and, if it was concluded for more than three years, if previously registered with the relevant registry.

Mortgages on real estate and easements are also transferred to the owner.

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#### 15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it? For example, environmental liability, defects in the real estate, and contractual liability to the buyer.

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Generally, a seller of real estate has a legal warranty for eviction (see Question 11) and a legal warranty for defects, which may be strengthened or lessened by the parties' agreement. Also, apart from eviction and defects, parties usually provide in the sale agreement for the seller's liability for false or misleading statements relating to the real estate.

For leases, the former occupier can be held responsible after leaving the premises, for example, for damage to the real estate (other than that triggered by normal wear and tear from use).

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#### 16. What costs are usually paid by the buyer? What costs are usually paid by the seller?

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##### Buyer's costs

Under the Civil Code, unless otherwise agreed by the parties, the costs incurred with a sale and purchase agreement including the notary public fee, registration tax and VAT, if applicable, are paid by the buyer. In addition to these compulsory taxes, the buyer is also responsible for its consultants' fees, if any.

### Seller's costs

Generally, the seller does not incur any cost by selling real estate, except for its own consultants' fees, if any.

## REAL ESTATE TAX

### 17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

Generally, VAT does not apply to real estate acquisition, except when:

- The land is for construction purposes.
- The building is new. The building is deemed new if the ownership transfer occurs no later than 31 December of the year following when the building was:
  - first occupied (that is, the signing year of the acceptance minutes for the construction or the signing year of the document based on which the building is registered in the accounting records as a fixed tangible asset); or
  - first used (referring to buildings subject to structural improvements or changes valued at more than 50% of the initial value, and means the year when the acceptance minutes for completion of material improvement works were signed, or when the document based on which the value of the fixed tangible asset is increased is signed).

A seller subject to VAT charges VAT to the buyer and pays it to the state budget, according to the VAT discounted rate. The standard rate is 24%. In certain cases expressly provided by the law, the VAT rate is 5%.

### 18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase? Who pays? What are the rates? Are there any exemptions?

Transfer tax applies to the sale of real estate and is paid by the seller:

- If the seller is an individual, if the real estate was acquired:
  - within the three years immediately preceding the sale, the tax is 3% of the value up to RON200,000 (as at 1 September 2010, US\$1 was about RON3.3). If the real estate price is RON200,000 or more, a tax amounting to RON6,000 plus 2% of the value exceeding the RON200,000 threshold is paid;
  - more than three years before the sale, the tax is 2% of the value up to RON200,000. If the real estate price is RON200,000 or more, the tax is RON4,000 plus 1% of the value exceeding the RON200,000 threshold.
- If the seller is a legal entity, the rate is 16%.

In certain cases, withholding of transfer tax by the buyer may be mandatory. If the sale and purchase agreement is subject to authentication by the notary public (in the case of land), the tax is retained and paid by the notary to the state.

There are no exemptions.

### 19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios?

The most common way is structuring the transaction as a share deal, and not as an asset deal, mostly in cases where the real estate is owned by a company (used as a special purpose vehicle). However, when the real estate represents more than 50% of the total fixed assets of the special purpose vehicle and the selling shareholder is a foreign entity, the transaction is considered as a real estate transaction, and the seller must pay relevant tax on the resulting income to the Romanian authorities.

## HOLDING BUSINESS PREMISES

### 20. Are there targets to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria? If yes, please give brief details.

In 1997, Romania was one of the signatory parties of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, which established the rules and objectives for the decrease of greenhouse gas emissions from 2008 to 2012. Romania undertook to reduce greenhouse gas emissions to 92% compared to the 1990 level. Romania implemented an EU-specific system consisting of the issuance and commercialisation of "greenhouse gas emission certificates" for involved entities, which must observe the levels set by such documents.

To meet the EU regulations, Romania also adopted Law No. 372/2005 on the energy efficiency of buildings. According to this law, each building, depending on its specific purpose, must meet special criteria, for which a certificate for energy performance is issued by authorised energy auditors. In addition, as of 1 January 2011, the existence of this certificate will be a condition of executing leases and sale and purchase agreements.

### 21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties, for example through outsourcing transactions? If yes, please give brief details.

Although more frequently used by large companies rather than smaller ones, outsourcing has become quite common practice, particularly for accommodation needs. For example, for the purpose of improving the cash flow, most banks prefer to lease the premises necessary to carry out their activities. The management of portfolios does not usually involve transfer of ownership titles over the real estate towards third parties (except for off-shoring scenarios). The owner usually prefers to ensure the management of the portfolio. However, recently, consultants are being requested to provide assistance before transactions.

### 22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

The Constitution provides that the acquisition of land by foreign

citizens and legal persons is permitted in accordance with the terms of Romania's membership of the EU and on a reciprocity basis with the state of origin of foreign citizens or legal persons. Further, relevant laws specify that EU citizens and legal persons can only buy land after five years from Romania's accession to the EU in 2007, and for agricultural land after seven years. This issue has been widely disputed in practice and in theory, and opinions are divided (part of the practice acknowledges the right of EU citizens resident in Romania to buy land as of 1 January 2007, when Romania adhered to the EU). However, notaries public are currently reluctant to allow this kind of transaction.

By exception, a foreign person can acquire ownership of land in Romania through legal inheritance (only individuals can gain ownership in this manner).

Non-EU citizens can buy land in Romania under the conditions set out by the Constitution. However, they cannot benefit from more favourable conditions than EU members. The right to use land (for example, through lease or similar agreements) as well as ownership over constructions can be freely acquired by foreign persons.

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### 23. Does change of control of a company affect its holdings of real estate?

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A new shareholding structure has no legal effect on the ownership of real estate held by a company, since the legal personality of the company is not affected.

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### 24. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

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State or local authorities have the legal means to perform compulsory acquisitions through the expropriation procedure. As a condition of expropriation, the state or local authorities must undergo the public interest establishment procedure. Then the relevant authority directly negotiates fair and prior compensation with the real estate owner, which the owner is legally entitled to and which can be interpreted as being the market value of the real estate. If the parties disagree on the amount of the compensation, the owner of the real estate can file a claim with the competent court, which consequently sets compensation.

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### 25. Are municipal taxes paid on the occupation of business premises, for example business rates? Are there any exemptions?

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No municipal tax is paid on the occupation of business premises.

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## REAL ESTATE FINANCE

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### 26. How are acquisitions of large real estate portfolios or companies holding real estate generally financed?

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Current practice has shown that the acquisition of large real estate portfolios is financed mainly by banking and non-banking financial institutions, through various forms of financing products,

ranging from term loan facilities to syndicated loan agreements. The acquisition of land generally represents a minor part of the development costs. Therefore, funds are usually obtained for the entire project that is envisaged.

However, investment funds tend to finance their special investment vehicles directly from their own resources, either by share capital contributions or by shareholder loans, depending on the nature of each project.

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### 27. How is real estate commonly used to raise finance?

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Real estate is one of the most common forms of security for financing, meaning that the costs of the project are generally secured by the land subject to the development. Such security is created by a mortgage agreement which must be concluded in a form authenticated by notary public. Charging real estate with a mortgage does not restrict the transfer of real estate, but the beneficiary of the mortgage is paid first from amounts resulting from foreclosure of the charged real estate, or the mortgage continues to apply to the real estate after it is transferred to the buyer.

Sale and leasebacks are mainly used in relation to industrial equipment, and are not as common in the real estate sector.

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### 28. What are the most common forms of security granted over real estate to raise finance? How are they created and perfected (that is, made valid and enforceable)?

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The most commonly form of security over real estate is a mortgage, which is duly executed when authenticated by a notary public. Any deed creating an interest in real estate must be authenticated, otherwise it is null and void (*Law No. 247/2005*).

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### 29. Is real estate securitisation common in your jurisdiction? If yes, please give brief details.

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Although a general legal framework for securitisations has been adopted, a real estate securitisation system has not yet been implemented. It is expected that the reform of the assignment of receivables contemplated by the new Civil Code will be the foundation of the securitisation system. This reform mainly consists of clarifications to current regulations and also includes the:

- Widening of the area of assignable receivables to most money receivables.
- Possibility of assigning, in certain conditions, future receivables.
- Express regulation of contract assignment.

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## REAL ESTATE LEASES

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### 30. Are contractual lease provisions regulated or freely negotiable?

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The terms and conditions of a lease are subject to the parties' negotiations. Clauses agreed by the parties are supplemented by the general regime of leases, provided by the Civil Code. As an

exception, residential leases are subject to certain provisions of Dwelling Law no. 114/1996.

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**31. How are rent levels usually reviewed and are there restrictions on this? Is VAT (or equivalent) payable on rent?**

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Contractual rents are usually subject to yearly indexation which varies from a specific percentage, to the enforcement of a specific rent index, such as the Harmonised Index of Consumer Prices, the Consumer Price Index or any other index at the parties' convenience. VAT usually applies to rent.

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**32. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term? If yes, please give details.**

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There is no specific term for a lease. Therefore, the lease contract remains valid and binding even if concluded for an undetermined period of time. The non-determination of the term does not however give the agreement perpetuity, which is prohibited and has consequences in relation to break rights. In practice, commercial leases are usually concluded for a period between ten to 15 years for regular tenants, and 20 to 25 years for anchor tenants.

The sole statutory right of lease renewal provides for the tacit renewal of the lease, if after the term expires, the tenant continues to use the premises and the landlord does not oppose or hinder the use. However in these cases, the duration of the new lease must be considered as undetermined, so that the contract may be terminated at any time.

In practice, anchor tenants are granted the right to extend the lease by five year terms, up to three times consecutively.

In the context of the financial crisis, the legal concept of *impreviziune* is increasingly used by tenants trying to exit long-term leases concluded during the economic boom period. This concept allows contractual parties for whom the contractual obligations became too burdensome to exit the agreement.

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**33. What provisions or restrictions typically apply to the disposal of the lease by the tenant (for example, can the tenant assign or sublet the lease with the landlord's consent)?**

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As a rule, the tenant is free to assign the lease, unless expressly prohibited by the lease. For the assignment to be enforceable against third parties (including the landlord) the tenant has to serve notice. Generally, landlords try to resist assignment without prior approval. Further, assignment by the tenant is subject to the conduct of the assignee (no outstanding breaches of the tenant's obligations until the assignment). However, the right to assign the lease to group companies or subsidiaries of the tenant is usually freely allowed.

Subletting is also allowed unless expressly prohibited. In practice, landlords allow the tenant to sublet mostly to group companies or subsidiaries of the tenant, or to credit or service providers closely related to the tenant's business activity, subject to the payment of rent and service charge not being affected.

## REAL ESTATE ORGANISATIONS

### National Agency for Cadastre and Real Estate Publicity (Agenția Națională De Cadastru Și Publicitate Imobiliară)

**Main activities.** This is the public institution responsible for keeping the land register for real estate, as well as for coordinating national cadastre activities.

**W** [www.ancpi.ro](http://www.ancpi.ro)

### National Union of Notaries Public from Romania (Uniunea Națională a Notarilor Publici din România)

**Main activities.** This is the professional organisation of the notaries public in Romania. It can also set general notaries' fees.

**W** [www.uniuneanotarilor.ro](http://www.uniuneanotarilor.ro)

### National Trade Register Office (Oficiul Național al Registrului Comerțului)

**Main activities.** This is responsible for maintaining the publicity system and evidence of Romanian companies.

**W** [www.onrc.ro](http://www.onrc.ro)

### Romanian State Domain Agency (Agenția Domeniilor Statului)

**Main activities.** This is an institution of public interest. It was created to privatise state-owned companies in the agricultural sector, and concessions over land held by such companies.

**W** [www.domeniilestatului.ro](http://www.domeniilestatului.ro)

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**34. Can tenants usually share their business premises with companies in the same corporate group? If yes, on what terms?**

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Landlords generally refuse the sharing of occupation without prior consent, though this consent must not be unreasonably withheld or denied. Permission is usually granted for group companies or subsidiaries.

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**35. Who is usually responsible for keeping the leased premises in good repair?**

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The landlord must maintain the real estate in proper condition to enable its use as agreed in the lease. Any maintenance works must be carried out so that minimum disturbance is caused to the tenant.

Under the current legal regulations (unless otherwise agreed by contract), the landlord is responsible for major repairs and the tenant for minor repairs to the real estate. Practice, however, has begun to shift and tenants are becoming more responsible for the internal repairs, but landlords must perform external repairs and all structural internal repairs. Costs incurred by landlords are recovered through the service charge.

The tenant must also maintain the real estate as per the agreed standards. Redecoration is usually demanded after a fixed period of years, most commonly in office leases.

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### 36. Who is usually responsible for insuring the leased premises?

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Although not mandatory, in practice, the real estate is insured by the landlord, a wide range of commercial risks are covered, including fire, explosion, water damage, earthquake and, recently, terrorism. Insurance costs are recovered through the service charge. However, the tenant's premises located within the real estate is not covered by such insurance. It is optional for the tenant to insure its premises, but often it is a requirement to obtain third party liability insurance in relation to the tenant's covenants under the lease.

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### 37. On what grounds can the landlord usually terminate the lease? Please briefly outline any restrictions or procedure that applies. Can the tenant terminate the lease in certain circumstances?

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If the parties have determined a specific duration for the term, the lease terminates on expiry of the term, unless otherwise provided in the lease. If the lease has an undetermined duration, either party can terminate the lease at any time, by giving prior notice to the other party.

If one party materially breaches its contractual obligations, the other party is legally entitled to file a termination claim with a court. However, the court can assess the existence and consistency of the alleged breach, and can also allow for a limited remedy period. To avoid this time-consuming procedure with an uncertain outcome, the parties usually agree termination clauses in predetermined cases. However, if the tenant refuses to leave the property, the landlord must obtain an eviction order to repossess the property, since the lease is not a writ of execution.

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### 38. What is the effect of the tenant's insolvency (under general contract terms and insolvency legislation)?

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Insolvency legislation does not expressly regulate the effects of the tenant's insolvency. It was widely agreed that the landlord could terminate the contract if the tenant became bankrupt or insolvent.

Generally, landlords attend insolvency proceedings as unsecured creditors and their potential claims (rent and ancillary) are satisfied under the order of preference. To avoid this situation, the lease usually provided for early and automatic termination if the tenant became insolvent or is subject to insolvency proceedings.

In 2009, the insolvency regulations were substantially amended. Consequently, ongoing agreements are considered to be in force when insolvency proceedings are opened and any clauses concerning the termination of an agreement for insolvency reasons are void.

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## PLANNING LAW/ZONING

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### 39. What authorities regulate planning control and which legislation applies?

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Zone planning is generally regulated by Law No. 350/2001 on territorial planning, as amended. The local administrative bodies that

have control and approval powers over urban matters are the city and county council. Zoning regulations relating to the national area or of national interest are issued by the central administration.

The approved zoning plans are treated as legislation and are mandatory.

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### 40. What planning consents (for example, planning permission or building permits) are required and for which types of development?

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Real estate development projects require a building permit and compliance with existing zoning plans for the relevant area.

The building permit entitles its holder to perform construction works, while zoning plans establish urban regulations for a specific area.

The zoning plans include the general town plan (*Planul de Urbanism General*) and related local regulations, that is, the regional town plan (*Planul de Urbanism Zonal*) and the detailed town plan (*Planul de Urbanism de Detaliu*):

- General town plan. This is of operational guiding and regulatory character, representing the legal basis for development programmes and actions. It includes short-term and long-term regulations. It is drawn up by each locality and updated at least every ten years.
- Regional town plan. This sets out the objectives, actions, priorities, and urban regulations (permissions and restrictions) enforceable in a particular area.
- Detailed town plan. This sets out the conditions concerning the location and execution of a piece of land on which constructions with a specific designation are to be built.

For construction purposes, if the specific zoning requirements cannot be complied with, the approval of a new zoning plan modifying the existing one may be required.

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### 41. In relation to planning consents:

- Which body grants initial planning consents?
- Do third parties have the right to object? If yes, please give brief details.
- In what circumstances is there a public inquiry?
- How long does an initial decision take after receipt of the application?
- Is there a right of appeal against a planning decision? If yes, please give brief details.

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#### Initial consents

To obtain a zoning plan, the interested party may have to first obtain from the mayor an urban certificate, confirming the zoning regulations for the relevant area. This sets out a series of permits and endorsements to be issued by utilities suppliers or local or central bodies, if required for approval of the respective zoning plan. Under legislative changes that occurred in the summer of 2009, when

changes to the urbanism regulations already in place are required or when the specifics of the investment entail it, the public authority requested to issue an urbanism certificate is entitled either to:

- Approve the request.
- Reject it in a justified manner.
- Further require a regional town plan approved on the basis of an opportunity endorsement.
- Further require the carrying out of a detailed town planning.

When all endorsements and permits are obtained from the relevant authorities, the applicant for a zoning plan must submit these documents, together with related technical documentation and the initial urban certificate, with the local council to obtain zoning plan approval.

### Third party rights

Law No. 350/2001 on territorial planning expressly provides that, once approved, the zoning plans become available to third parties, who are consequently entitled to object to them.

Further, the procedure for approving the zoning plans involves, among others, a public consultation procedure, mainly consisting of ensuring notification of the proposed zoning plan, and the opportunity for any interested party to object or to suggest amendments.

### Public inquiries

As a pre-condition of issuing a zoning plan, the proposed plan must be made public to notify any interested person and to grant

the right to each individual who may be affected to make amendments (*see above, Third party rights*).

### Initial decision

Zoning plans are subject to the approval of the local council, which usually convenes once a month and in extraordinary circumstances, when necessary.

### Appeals

Since zoning plans are regulatory administrative deeds, they can be appealed at any time in the administrative court, under Law No. 554/2004 on administrative dispute resolution.

## REFORM

### 42. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

The National Authority for Public Procurement Regulation and Monitoring recently launched a project to substantially overhaul the existing legal framework. One of the major changes proposed is the express regulation of public-private partnerships and related implementation mechanisms, which will make the process more efficient and less time-consuming.

These changes are only part of a legislative project, which is open to suggestions from the public. It is not unknown when these changes will enter the legislative approval procedure, and if they will enter into force.

## CONTRIBUTOR DETAILS



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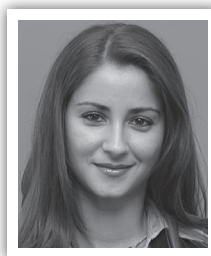
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**Qualified.** Romania, 1999

**Areas of practice.** Real estate and construction; project finance; and corporate restructuring and insolvency.

### Recent transactions

- Assisting La Caixa in relation to real estate acquisitions and development project financings in Romania totalling over EUR200 million.
- Advising Grupo Lar in connection with various land acquisitions in Bucharest and Cluj, and developing residential compounds exceeding EUR300 million in value.
- Advising Colas concerning the renegotiation and restructuring of two construction agreements concluded with The National Highway and Road Company (CNADNR) with a value of over EUR190 million.

**Qualified.** Bucharest, 2003

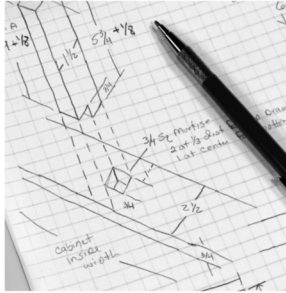
**Areas of practice.** Real estate; construction and project finance.

### Recent transactions

- Advising BNP Paribas Real Estate during the restructuring of the management board and consolidation of its equity participation in its Romanian subsidiary.
- Advising Erste Bank in relation to a EUR12 million term loan facility granted in view of the refinance of the acquisition, renovation and refurbishment of an office building in Bucharest.
- Advising Grupo Puentes on the development of major infrastructure projects to be developed in Cluj, Turnu Magurele and Tulcea.

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- Dispute Resolution (PLC Which Lawyer?, Legal 500, Chambers Europe)
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- Real estate and construction (PLC Which Lawyer?, Legal 500, Chambers Europe)
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- Restructuring & Insolvency (PLC Which Lawyer?, Chambers Global)
  - Capital markets (PLC Which Lawyer, IFLR 1000)
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