



# 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?

Although compared to the years before the financial crisis, the number and value of transactions have decreased in the last year, the Romanian real estate sector has started to recover from the effects of the global economic crisis. Romania still offers a wide range of real estate opportunities, since many areas still need to be developed to reach EU standards.

New shopping centres and malls continue to open, for example the:

- **Pallady Shopping Centre.** One of the largest local real estate developers, Avrig 35 (developer of Charles de Gaulle Plaza, an iconic office building in the business area of Bucharest) announced in 2011 a partnership with Cascade Group (a fully owned subsidiary of East and Central European Venture Capital BV) to develop the Pallady Shopping Centre (an EUR80 million retail park). As at 1 September 2011, US\$1 was about EURO.7.
- **Coresi Shopping City.** This development is expected to begin in 2011. It covers a total area of 123 hectares on the former Tractorul Brasov (former state enterprise) industrial sites.

The global recession has also affected the lease market. According to a report issued by consultant King Sturge (*European Office Property Markets 2011*), growth is expected in 2011. The main areas of interest are the central and northern areas of Bucharest, which attracted much relocation in the first quarter of 2011.

Infrastructure remains one of the most important real estate investment areas, as Romania still needs substantial investment in this field. In early 2011, new public procurement procedures were launched for the anticipated construction of part of the 4 Trans-European Road (*Coridorul 4 Paneuropean*), namely:

- Nadlac to Arad.
- Timisoara to Lugoj.
- Lugoj to Deva.
- Orastie to Sibiu.

## REAL ESTATE INVESTMENT

### 2. How is real estate investment carried out in your jurisdiction and what structures do investors use?

#### Common structures

From an economic point of view, the Romanian real estate market is considered to be 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 the 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 into 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 started being used that involves the absorption of a real estate owner company and further infusion of equity.

#### REITs

Real estate investment trusts (REITs) are not specifically regulated in Romania, and companies with a similar profile enjoy no preferential fiscal treatment.

#### Institutional investors

Since the establishment of private pension funds, institutional investors are expected to become market leaders.

#### Private investors

Most real estate investors are private entities, although institutional investors are expected to become market leaders (*see above, Institutional investors*).

## REAL ESTATE LEGISLATION

### 3. What is 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 6 March 1945 and 22 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.

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

#### *Information in the public register*

#### **6. What are the main information and documents registered in the public register of title?**

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.** This contains the description of the real estate (components, such as land, buildings, surfaces and destinations and an individual cadastral number for each component).
- **Part II.** This evidences 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.** This refers to rights temporarily granted to third parties (such as occupancy, leases, 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).

#### *Protection from disclosure*

#### **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.

#### *State guarantee of title*

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

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 has increased. However, the 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.

## TITLE TO REAL ESTATE

### *Title and registers*

#### **4. 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, any buildings erected on it or fixtures attached to the buildings. Land and buildings on it are registered together.

### *Evidencing title*

#### **5. How is title to real estate evidenced?**

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

For the purpose of third party notice, 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.

Under the new Civil Code, which entered into force on 1 October 2011, registration with real estate public registries will no longer be performed for third party acknowledgement purposes, but will confirm ownership.



## Tenure

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

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.

## SALE OF REAL ESTATE

### Main stages and documents

### 10. What are the main stages and documents in the sale of real estate?

#### 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 and 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.

#### Seller's liability to the buyer

### 11. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

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 (*garantia pentru evictiune*), 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).

### Due diligence

#### 12. What real estate due diligence is typically carried out before an acquisition?

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.

### Sellers' warranties

#### 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?

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.

### Inheriting liability

#### 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?

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 either:

- Concluded in authenticated form or bearing a certified date.

- Previously registered with the relevant registry.

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

### Retention of liability after disposal

#### 15. Does a seller or occupier retain any liabilities relating to the real estate after it has disposed of it?

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).

### Seller and buyer costs

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

##### 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 value added tax (VAT), if applicable, are paid by the buyer (see *Questions 17 and 18*). 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 TAXES AND MITIGATION

#### 17. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate?

Generally, VAT does not apply to the delivery of real estate, except for the delivery of new buildings or any part of a new build or buildable land. For this purpose:

- The land is deemed buildable for construction purposes if the urbanism certificate (that is, an official document confirming the zoning regulations for the relevant area) states that it is buildable.
- The building is deemed new if the ownership transfer occurs no later than 31 December of the year following the year when the building was:
  - first occupied (that is, the date of signing the acceptance minutes for the construction or the date of signing 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 date when the acceptance minutes for completion of material improvement works were signed, or the date when the document based on which the value of the fixed tangible asset is increased is signed).

However, a person subject to VAT can choose to apply the VAT regime to the delivery of real estate. If the taxable person chooses to apply (either totally or partially) the VAT regime to delivery of real estate, he must notify the relevant tax authority and send a copy of the notification to the buyer. Under the VAT regime, a taxable person is entitled to deduct VAT related to the acquisitions of goods or services

The standard VAT rate is 24%. In certain cases expressly provided by the law, the VAT rate is reduced to 5% (that is, for transactions concerning dwellings and related land, provided they meet certain surface or value criteria).

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#### 18. Is stamp duty/transfer tax (or equivalent) payable on the sale or purchase and who pays?

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Generally, there is no transfer tax or stamp duty on the sale of real estate. However, the transfer of land is subject to mandatory authentication by public notary and therefore is subject to notary fees (which can vary depending on the transaction value). Generally, the buyer pays the notary fees unless the parties agree otherwise.

Income tax (a tax on income realised by individuals on a transfer of real estate) may also be payable. Generally, income realised from the sale of real estate is subject to tax if the real estate was acquired either:

- Within the three years immediately preceding the sale. The tax is 3% of the value up to RON200,000 (as at 1 September 2011, US\$1 was about RON3.10). If the real estate exceeds RON200,000, a tax amounting to RON6,000 plus 2% of the value exceeding the RON200,000 threshold is due.
- More than three years before the sale. The tax is 2% of the value up to RON200,000. If the real estate exceeds RON200,000, the tax is RON4,000 plus 1% of the value exceeding the RON200,000 threshold.

Income realised from the transfer of real estate is exempt from tax in the following circumstances:

- Where an ownership right over real estate is re-established through restitution laws.
- Where the transfer of ownership is through gifts between relatives (up to third generation relatives) or spouses.
- Where the transfer of ownership is through inheritance, if the inheritance procedure is finalised within two years from the death of the ancestor. If the inheritance procedure is not finalised within two years, the inheritor must pay a 1% income tax on the inheritance value.

In certain cases, withholding of income tax on transfers of real estate 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 income tax on transfers of real estate is retained and paid by the notary to the state.

The registration fee amounts to 0.5% of the transaction value for legal entities and to 0.15% of the transaction value for individuals, but cannot be less than RON60.

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

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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 to be a real estate transaction, and the seller must pay relevant tax on the resulting income to the Romanian authorities.

### HOLDING BUSINESS PREMISES

#### *Climate change targets*

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#### 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?

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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 level in 1990. 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. Further, as of 1 January 2011, the execution of leases and sale and purchase agreements is contingent on the existence of the certificate.

#### *Third party outsourcing*

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#### 21. Is it common for companies to manage their real estate portfolios and their accommodation needs by using third parties through outsourcing transactions?

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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.





### *Restrictions on foreign ownership or occupation*

#### **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 (some practitioners acknowledge 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.

Under an 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.

### *Issues on change of control*

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

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.

### *Compulsory purchases*

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

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.

### *Municipal taxes*

#### **25. Are municipal taxes paid on the occupation of business premises? Are there any exemptions?**

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

### REAL ESTATE FINANCE

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

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.

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

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.

#### **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)?**

The most common 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*).

#### **29. Is real estate securitisation common in your jurisdiction?**

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 basis of the securitisation system. This reform mainly consists of clarifications to current regulations and also includes the:

- Widening of the scope of assignable receivables to almost all money receivables.
- Possibility to assign, in certain conditions, future receivables.
- Express regulation of contract assignment.



## REAL ESTATE LEASES

### *Negotiation and execution of leases*

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

The terms and conditions of a lease are subject to negotiations between the parties. 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.

#### **31. What are the formal legal requirements to execute a lease?**

There are no formal requirements to execute a lease agreement to ensure its validity. However, the agreement must be concluded in writing for it to be admissible evidence. In addition, leases must be registered with the Land Book (the Romanian Land Registry) for third parties' acknowledgement purposes. If registration is not performed, the lease can be transferred to the new real estate owner if concluded in authenticated form or bearing a certified date.

### *Rent levels and reviews*

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

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.

### *Length of term and security of occupation*

#### **33. 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?**

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 principle of *imprevision* (hardship) was used by tenants trying to exit the long-term leases concluded during the economic boom period. This principle allows contractual parties for whom the contractual obligations become too onerous to exit their respective agreement.

### *Restrictions on disposal*

#### **34. What restrictions typically apply to the disposal of the lease by the tenant?**

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.

### *Use of premises within a corporate group*

#### **35. Can tenants usually share their business premises with companies in the same corporate group?**

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.

### *Repair and insurance responsibilities*

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

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.

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

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 are 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.

#### Grounds for termination

#### 38. On what grounds can the landlord usually terminate the lease? Can the tenant terminate the lease in certain circumstances?

##### Landlord

There are no specific restrictions or procedures applying to landlord termination of a lease. Accordingly, 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 pre-determined 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.

##### Tenant

See above, *Landlord*.

#### Tenant's insolvency

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

Insolvency legislation does not expressly regulate the effects of the tenant's insolvency. In practice, it is widely agreed that the landlord can 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, insolvency regulations were substantially amended. Therefore, ongoing agreements are considered in force when insolvency proceedings are opened and any clauses concerning the termination of an agreement for insolvency reasons are void.

## PLANNING LAW

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

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

## 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)

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.

#### 41. What planning consents are required and for which types of development?

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*):

- **The general town plan.** This is of operational guiding and regulatory character, representing the legal basis for development programmes and actions, and includes short-term or long-term regulations. It is drawn up by each locality and updated at least every ten years.





- **The regional town plan.** This sets out the objectives, actions, priorities, and urban regulations (permissions and restrictions) enforceable in a particular area.
- **The detailed town plan.** This sets out the conditions concerning the location and execution of a piece of land, of one or several constructions with a specific designation.

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.

Recent amendments to the Law No. 350/2001 on territorial planning stipulate that individuals can no longer request the issuance of regional town plans (PUZ), except in the case of large real estate investments, such as industrial parks, shopping centres, and so on.

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#### 42. What are the main authorisation and consultation procedures in relation to planning consents?

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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. 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 urban certificate can do one of the following:

- Approve the request.
- Reject the request for justified reasons.
- Further require a regional town plan approved on the basis of an opportunity endorsement.
- Further require the carrying out of 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 precondition 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

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#### 43. Are there any proposals to reform real estate law in your jurisdiction?

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A new Civil Code came into force on 1 October 2011 as part of the justice reform under the EU Treaty on Accession 2005 (*OJ 2005 L157/11*). This new Civil Code represents the alignment of civil legislation with modern business practices. It will make material changes to real estate law. For example, registration with real estate registries will have constitutive effect (that is, the ownership right or other interest in real estate will be validly transferred or constituted only on registration). Further, new civil contracts, new real estate guarantees (such as real estate pledges), and a wide range of civil institutions will have unified regulation under the new Civil Code.

## CONTRIBUTOR DETAILS



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**Qualified.** Romania, 1999

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