

REAL ESTATE IN EUROPE

Central, Eastern & Southeastern Regions

Austria

Bulgaria

Czech Republic

Germany

Hungary

Poland

Serbia & Montenegro

Turkey

REAL ESTATE IN CENTRAL, SOUTHERN AND SOUTHEASTERN EUROPE

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ABOUT MERITAS

Meritas is a global alliance of business law firms that deliver localized legal service of the highest quality on a fully coordinated basis.

In 1990 a lawyer became frustrated with the lack of quality control in hiring business law firms outside his jurisdiction. He set about developing his own system for selecting and evaluation firm performance. He then began inviting like-minded firms worldwide to join a non-profit organization for their mutual benefit.

Today, that organization is Meritas with over 170 firms located in more than 60 countries and encompassing 5,700 lawyers.

Meritas firms are united by a common business plan and strategy which enables them to collectively offer legal services addressing the national and global needs of clients on a truly coordinated basis.

Typically in the top ten in their jurisdiction, with practice areas spanning the full range of domestic and international business law, Meritas firms offer a depth of experience and skill proven over many years in their local markets and in the international business arena. All firms work in English as well as their national language and many have multi-lingual legal teams in-house.

Membership in Meritas is by invitation only. Each firm is held accountable to rigorous membership requirements and service standards at entry and throughout their life in the organization.

Meritas therefore offers clients a unique global service — the highest standards of international capability in legal advice with an unmatched depth of local and national experience.

"Lubrizol has legal issues arising all over the world. Meritas offers us high quality firms in each major metropolitan legal market and that's a huge plus."

> Joseph Bauer Vice-President & General Counsel Lubrizol Corporation

"What I truly appreciate about working with the Meritas alliance is knowing that no matter which Meritas firm I engage, I am going to get excellent work and superb service."

> Meredith Stone Vice-President, General Counsel Americas NACCO Materials Handling Group, Inc

MERITAS REAL ESTATE GROUP

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CONNECTED COUNSEL, COMPREHENSIVE RESPONSE

With a significant increase in cross-border investments, the globalisation of real estate is on the rise. Companies working in this global environment need legal advisors with deep industry knowledge and strong local expertise who can help them wherever their business takes them.

The Meritas Real Estate Group meets all these needs.

The group links experts worldwide; each having excellent command of local real estate laws. Meritas firms have significant real estate practices allowing the group to resource its clients with the appropriate size team of the right blend of specialist expertise and experience in more than 60 countries.

Meritas real estate lawyers have regular contact working together on client projects. This long experience in collaboration enables them to provide a fully-integrated, consistent, high-quality service. It also means our lawyers are internationally-minded professionals who appreciate the cultural and legal principles of foreign jurisdictions.

OUR SERVICES

The Meritas Real Estate Group can help you efficiently and economically meet your objectives in all your real estate transactions. The group offers a comprehensive range of services in this area of law. Examples of matters on which the team can advise include:

- Acquisitions and sales of real estate, including due diligence
- Commercial leasing
- · Project financing
- Planning
- Property developments and construction
- · Environmental issues
- Litigation and arbitration proceedings

Due to our members' long-term presence in the real estate sector, the group is experienced to act for the various industry stakeholders (property investors, developers, landlords, tenants, lenders, borrowers) and add value by understanding each of their specific objectives.

PROJECT MANAGEMENT

When clients choose to work on a cross-border real estate transaction with the group, they can save time and effort by using the group's centralised management. A lead partner is assigned to coordinate the service provided by national member firms.

All team members have the skills required to coordinate an international project and clients may contact any member of the team in the country of their choice.

Clients can also work directly with individual offices as they wish. The group's working methods are flexible and will adapt to each client's specific case.

WHY CHOOSE US?

- GLOBAL COVERAGE
- EXTENSIVE LOCAL RESOURCES AND EXPERTISE
- A GROUP WITH A HISTORY OF WORKING TOGETHER
- COORDINATED SERVICE
- Cost effectiveness

The information presented in this brochure is for general information purposes only. It is not intended to be comprehensive or to provide any specific advice. There may be exceptions to certain points outlined. Circumstances and applicable legislation may change at the time of transaction.

GENERAL

In order to acquire real estate in Austria, two steps are necessary. First, a contractual obligation (Titel), e.g. a purchase contract is needed and second, a disposal of the real estate (Modus). The transfer of ownership is not completed by the mere occupation of the property, but only upon registration into the land register.

REAL ESTATE REGISTER

Under Austrian law, any grant, transfer or limitation of rights in connection with real estate (e.g. ownership and mortgages) have to be recorded in the relevant land register which is operated by the District Courts (Bezirksgerichte) in order to become effective vis à vis third parties. As long as a legal transaction is not registered, the party to the contract has only a contractual claim for performance against the other contracting party.

The rules and requirements for registrations are the same throughout Austria; there is only one real estate registry. The beneficiary of a registration must file an application for registration (Grundbuchsgesuch) with the competent district court, which will have to be accompanied by specific documents depending on the nature of the registration. On average, the registration process takes approximately three working days.

SYSTEM OF REGISTRATION

All privately-owned and state-owned land in Austria must be registered. All rights over land are required to be registered in order to be effective. In general, it is possible to create these rights through contractual agreements only (e.g. to save on the registration fee of 1% of the purchase price), but the enforceability of these rights is dependent on their registration. Therefore registration of these rights is not compulsory but necessary in order to obtain and constitute full legal protection.

Generally a bona fide third party can rely on the correctness and the completeness of the recording in the land register.

PURCHASE CONTRACT

For registration into the land register, a deed of title (e.g. the purchase contract) must be constituted and the signatures of the contractual parties must be authenticated by a court or a notary public.

Usually, the attorney or notary public who drafts the purchase contract also acts as an escrow agent for monies paid towards the purchase price. The trusteeship is a service provided by the Austrian attorneys and notaries and is used to safeguard contractually stipulated payments.

Real estate contracts often provide for different warranty periods, depending on the issue warranted. The statutory warranty period for real estate is three years; it can be extended or abbreviated by mutual agreement.

REAL ESTATE ACQUISITION BY FOREIGNERS

The acquisition of real estate by foreigners is restricted by the Laws on the Acquisition of Land by Foreigners (Ausländergrundverkehrsgesetze) of the federal states. Depending on the respective state, this is also true for the acquisition of certain rights like "usufruct" (Fruchtgenuss), building rights or long-term leases.

However, in almost every federal state of Austria, foreigners are required to obtain a permit (prior approval) from the land transfer authority in order to purchase land. This also applies for companies where a foreigner is a majority shareholder.

Under all Land Transfer Acts, EEA/EU citizens and companies are treated like Austrian citizens/companies. However, a certificate confirming the EEA/EU citizenship or corporate seat must be obtained from the land transfer authority in order to be registered in the land register.

PROPERTY TRANSFER TAXES & FEES

Real Estate Transfer Tax: The purchaser must also pay the applicable real estate transfer tax of 3.5% of the consideration (e.g., the price of the real estate). Should there be no consideration, the tax shall be calculated based on the actual value of the real estate.

Gift Tax: The transfer of real estate without consideration triggers gift tax, which will be calculated using a threefold assessed value. The amount of tax is based upon the amount of the purchase and upon the degree of kinship.

Value Added Tax: In principle, deliveries and other services performed in Austria by an entrepreneur against payment within the scope of his business operations are subject to value added tax. Land transfers are an exception and are not subject to value added tax. However, the selling entrepreneur has the option to treat the transaction as taxable.

Registration Fee: For the registration of the contract into the land register, a registration fee of 1% of the consideration must be paid.

FINANCING

Loan Agreement: There are no specific formalities to be fulfilled with respect to loan agreements.

Credit Agreements: Another method of financing the purchase of real property is through a credit agreement.

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Leasing: Real estate transactions are also often financed through financing or operating leases.

Mortgage Agreement: The establishment of a contractual mortgage right on a property requires not only an incorporable document (i.e. the mortgage agreement), but also the registration of the mortgage into the land register. Mortgages, like ownership rights, are only established upon their registration into the land register.

Taxes and Fees: Loan and credit agreements are subject to a legal transaction fee in the amount of 0.8% of the repayment amount.

Generally, the registration of a mortgage triggers a legal transaction fee of 1% of the value of the secured obligation. However, a mortgage deed is not subject to a legal transaction fee if it is signed no later than the loan agreement secured by the mortgage.

Moreover, there is a court fee for the registration of the mortgage into the land register of 1.2% of the repayment amount, which the applicant must pay upon registration, at the latest.

LEASE AGREEMENTS

The most important types of lease agreements are tenancy agreements (Mietverträge) and usufructuary lease agreements (Pachtverträge). Tenancy agreements deal with the lease of an object for use against consideration. The latter deals with the lease of an object for use and profit against consideration.

Lease: In Austria, residential and commercial leases are primarily governed by the tenant-friendly Austrian Lease Act, which is often applicable. The regulations of the Austrian Civil Code apply secondarily and, unlike the Austrian Lease Act, are to a certain extent not mandatory.

A lease agreement can be entered into with either a fixed or an indefinite term.

Rent: In principle, the rent may be freely negotiated and is usually paid in advance on a monthly basis.

Pursuant to the Austrian Lease Act, the rent may only be freely negotiated if the lease is one to which the Austrian Lease Act is only partially applicable. If the Austrian Lease Act is fully applicable, the rent either must be adequate or capped at a maximum amount.

The permissible amount for the adequate rent is calculated based on size, type, quality, location, as well as the accoutrement and state of preservation at the time the lease is entered into.

In Austria, a written lease agreement is subject to a stamp duty payable to the Austrian tax authorities at a rate of 1% of all rental payments (including service charge, operating costs and VAT) payable by the lessee to the lessor during the term of the lease. In case of indefinite contracts, stamp duty is calculated on the basis of three annual rental payments. In case of fixed-term contracts, stamp duty is calculated on the basis of a maximum of 18 years.

The applicable gross monthly rent consists of the rent plus service charges and VAT, and if agreed upon, one time payments like building cost subsidies.

Apart from stamp duty fees, VAT is payable in an amount dependent on the purpose of the lease. Leases for residential purposes are taxed at 10%. Leases for other purposes (e.g., commercial rents) do not trigger VAT; however, the landlord has the option to tax the sale. In this case the rent is taxed at 20%.

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office@ssfp-law.at www.ssfp-law.at Siemer - Siegl - Füreder & Partner is a law firm with an international orientation having its seat in Vienna. Founded in 1959, the firm brings together a steadily growing team of highly qualified lawyers.

We represent national and international business. Our main practice areas are corporate law, real estate law, M&A, public procurement and competition law, banking and finance, labor law, intellectual property law and arbitration. In response to the challenges of the New Economy, our portfolio of counselling services also includes e-commerce. Of course we also offer counselling in matters of litigation, debt collection, trade law, etc. Our law firm is licensed to practice before all courts and administrative authorities in Austria and before the institutions of the European Union.

In addition to first-rate international training, the partners and lawyers working with Siemer - Siegl - Füreder & Partner have acquired the long-standing experience that forms a solid foundation for client counselling. Personal attention to our client's needs and a spirit of partnership in cooperation are characteristic of our law firm's working style. Beyond the scope of their works as attorneys, our lawyers also assume other tasks in the world of the legal profession. This includes mandates to serve on supervisory boards, as well as work in other advisory bodies, as arbitrators for the International Chamber of Commerce and as the authors of legal publications. The fact that our partners and associates are regularly invited to speak at law workshops and conferences underscores their professional competence.

Our approach to counselling clients and handling cases has always been solution-centered and success-oriented in order to enable our clients to realize their economic goals through the most efficient legal measures. There is probably no better evidence for competence and client satisfaction than the large number of clients who have trusted us over many years.

Siemer - Siegl - Füreder & Partner maintains excellent relations with other law firms around the world, especially in the EU and the Americas. We also cooperate with colleagues from Central and Eastern European countries on a regular basis.

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GENERAL

According to Bulgarian law the purchase of real estate takes place through the conclusion of a sale contract in the form of a notary deed. The contract is signed in front of a notary public in the administrative area where the real estate is situated. The transfer of the title happens automatically when the notary deed is signed by the parties and the notary. The title transfer does not depend on the rendering of the actual possession of the property and the registration of the notary deed in the Real Estate Register.

PURCHASE CONTRACT

Usually, the notary deed is preceded by a preliminary contract by which the buyer and the seller undertake in a particular future moment to enter into the final contract for purchase and sale of the property when certain conditions are met. The preliminary contract therefore does not transfer the ownership and is not a compulsory requirement. However, it is quite common in practice because of the protection that each party can receive in case the other party breaches the contract —the non-breaching party is entitled to ask the court to announce the preliminary contract as final. If the claim is sustained, the court decision transfers the title instead of the notary deed.

When the purchase price is paid, an attorney or the notary might act as an escrow agent for monies paid to the seller.

REAL ESTATE REGISTER

Any notary deed that transfers, establishes or limits any real rights is subject to registration in the Real Estate Register. This includes purchase, donation, exchange, mortgage, etc. The register is operated by the Registry Agency through its offices (administrative departments) throughout the country. The authority of these offices coincides with the jurisdiction of the respective District courts. Real estate transactions are to be registered in the office within the area the property is located.

The registration of the notary deeds and the other acts that transfer or establish rights over real estate is usually provided by the notary who has executed the respective deed. The notary is obligated to submit the deeds for registration on the same day they were signed. The entry is performed upon a writ of the registry judge. The registration takes approximately three working days and after that the original title deed is returned to the beneficiary.

The registration gives publicity to the transaction but it also provides certain legal protection to the acquirer of the real rights because he will be able to oppose his rights to any person who has registered his deed (or claim) over the same property afterwards.

If by any chance the transaction has not been registered, it binds legally only the parties to the contract and cannot be opposed to third parties.

The Real Estate register is regarded as a reliable source of information and the state is responsible for any damages occurred as a result of wrong registrations and untrue certificates for registrations.

SYSTEM OF REGISTRATION

All rights over real property are required to be registered and some of them (like mortgage and waive of ownership) enter in force only if and when registered. The registration procedure is the same throughout Bulgaria.

The deeds in the Real Estate register are recorded by the name of the right holders and not by the property. However, several years ago a special act was adopted that envisions that registrations will be arranged by property. Thus the "real" registration system will soon replace the "personal" registration system and in some regions (where the cadastre for all the properties is already prepared) the two systems work together.

The Real Estate Register is public and anyone interested can make an oral or written inquiry about the entered circumstances and is entitled to receive transcripts, extracts or certificates containing data about the entries.

REAL ESTATE ACQUISITION BY FOREIGNERS

There are no restrictions regarding the acquisition of apartments, buildings or limited real rights by foreigners or foreign legal entities. However, there are special restrictions controlling the acquisition of land by foreigners, provided in The Constitution of the Republic of Bulgaria and in The Property Act. Two cases are addressed: acquisition of land by non-EU/EEA citizens and acquisition of land by EU/EEA citizens.

Non-EU/EEA citizens can acquire land only if this option is provided in an international treaty or in case of hereditary succession. Should the case be the latter, the foreigner is obliged to resell the land in a three-year period as of the announcement of the inheritance.

EU/EAA citizens are entitled to acquire ownership over land under the requirements provided explicitly in an internal act of law and in compliance with the provisions of The Treaty of Accession of the Republic of Bulgaria to the EU. Citizens of the EU, who do not reside permanently in the Republic of Bulgaria, are entitled to acquire land for a second residential property after the expiration of the term set in The Treaty of Accession of the Republic of Bulgaria to the EU (five years).

Secondly, pursuant to the Treaty of Accession, Bulgaria cannot maintain any restrictions on land ownership for EU/EAA citizens who are legal residents in the country.

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There are two types of legal residence provided in the legislation — continuous and permanent. It can be assumed that EU/EAA citizens who have obtained certificates for continuous or permanent residence are freely entitled to acquire land in the territory of the Republic of Bulgaria.

Nevertheless, when a foreign natural or legal person wishes to acquire land in Bulgarian this usually happens through registration of a Bulgarian company — the company becomes owner of the land and the foreign person is the owner of the company.

The registration of the company is not complicated and does not require any Bulgarian representative or director.

PROPERTY TRANSFER TAXES & FEES

Local Tax: Upon acquisition of real property, the purchaser is obliged to pay a local tax to the respective municipal authorities of 2% of the price declared in the notary deed.

Registry Fee: For registration of the notary deed in the Real Estate Register, a fee of 0.1% of the consideration must be paid.

Notarial Fees: The notarial fees and the percentage on the basis of which they are calculated differ depending on the amount of the price declared. However, the fee cannot exceed BGN3,000 (EUR2,600).

Value Added Tax: Pursuant to the Bulgarian Value Added Tax Act, the transfer of the right of ownership over land or over limited real rights is treated as a free supply and is not subject to VAT. This exception does not include the transfer of ownership over newly-built buildings (up to five years old) and their adjacent areas.

FINANCING

The purchase of properties through credit agreements has become a widespread practice. The banks offer interest percentages that can vary between 5.8 % and 8.5 % and are comparatively inclined to negotiate.

The repayment of the loan (usually granted by the bank or the developer) can be secured with one of the following securities:

Mortgage

The establishment of a contractual mortgage over a real property requires two steps to be undertaken – the mortgage deed and its entry in the Real Estate Register. The entry of the contractual mortgage in the register is performed within the same working day.

Registry Fee: For registration of the notary deed in the Real Estate Register, a registry fee of 0.1% of the repayment amount (but not less than BGN5) must be paid.

Notary Fee: The notary fee is up to 1% on the material interest (usually this is the secured amount stated in the mortgage deed).

Registered Pledge Over the Commercial Enterprise

This is usually used when the credit receiver, i.e., the purchaser of the property, is a legal entity. The establishment of a registered pledge (pursuant to the Registered Pledges Act) requires concluding a contract for the establishment of the pledge, certifying the signatures of the parties and entering the pledge in the Pledge Register, in the Real Estate Register and in the Commercial Register.

Registered Pledge Over Receivables

This type of security might be established as an additional warranty for the creditor and usually aims at current and future receivables ensuing from rental agreements over the acquired property.

LEASE AGREEMENTS

Financial Lease Agreements

Widespread in most European countries, financial lease agreements are not yet so popular in Bulgaria with respect to purchase of real property but still used (about 5% of the lease market). Pursuant to Bulgarian law, the lease agreement is treated as a commercial transaction and is regulated by The Commercial Act, The VAT Act and The Registered Pledges Act. It is similar to the rental agreement, but also provides the additional option to acquire the property at the end of the contract term or even earlier. Furthermore, no extra warranties are required except those over the real property which is subject to the transaction.

Term: Usually 5 to 8 years.

Affiliation Fee: 10%-30 % of the actual property price.

VAT: It is usually credited by the financial institution offering the lease.

Registration: The lease agreement must be registered in the Special Pledge Register within 14 days of its conclusion in order to be effective with respect to third parties.

Function: Purchase of industrial buildings, offices, warehouses or other property with commercial or industrial use.

Rental Agreements

They are governed by the Bulgarian Obligations and Contract Act. Rental agreements may be freely negotiated for a fixed or for an indefinite term.

Rent: Usually, the rental payments are due in advance on a monthly basis. The amount is calculated based on the size, type (office or residential premises), quality, location, facilities and furniture as per the time the agreement is entered into.

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Effectiveness with respect to third parties: Upon resell of the real estate, the rental agreement binds the new buyer within the term of the rent stipulated in case it has been entered in the Real Estate Register before the sale. If an entry has not been performed but the conclusion date has been certified by a notary, the rental agreement shall bind the new buyer for not more than one year. In case none of the above mentioned (neither registration of the contract nor notarized date) is present, the rental contract shall bind the new buyer for not more than a month.

Taxes: The revenues ensuing from rental agreements are taxed at a rate of 10% of the taxable base. The taxable base is calculated based on all the rental payments per year minus 20% recognized as expenditures.

Nevertheless, it is possible for other tax schemes to be applicable as well.

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Dimitrov, Petrov & Co. (formerly ORAC) is a multi-faceted Bulgarian law firm, established in 1993 whose lawyers specialize in commercial and company law, foreign investments, real estate law, information and communications technology law, intellectual property, tax law, litigation and arbitration.

Our clients range from individuals to multi-national corporations, joint venture companies of all sizes and government bodies. We believe that it is our reputation, quality of service and experience that rank us within the top ten law firms in Bulgaria. The most respected legal guides in Europe and in the world containing referral information about lawyers and their practices — "Martindale-Hubbell," "Legal 500" and "Global Counsel 3000," recommend in their annual editions Dimitrov, Petrov & Co. as one of the most successful and reliable law firms in Bulgaria.

CZECH REPUBLIC

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GENERAL

In the case of a transfer of immovable property on the basis of a contract, the ownership title is acquired on its entry in the Cadastre of Real Estates.

This means that the buyer does not become the owner of the real estate at the time of execution (signing) of the purchase contract but on the official registration of his ownership right based on the purchase contract in the Cadastre of Real Estates. A similar principle applies to other property rights (right of lien, right of easement, pre-emptive right with material effect).

In administrative proceedings, the Cadastral Office assesses deeds and other documents, decides on whether to permit an entry and, based on these decisions, records the rights in the Cadastre of Real Estates. Property rights to real estate are created by registering in the Cadastre of Real Estates.

There is an administrative fee of CZK500 (app. EUR22) for the petition for entry of the ownership right in the Cadastre of Real Estates.

RECOGNITION OF OWNERSHIP

Although the ownership right to property recorded in the Cadastre of Real Estates cannot be effectively transferred without this transfer having been recorded in the Cadastre of Real Estates, the existence of the ownership right does not depend on its being recorded in the Cadastre. The fact that another party is recorded in the Cadastre of Real Estates as the owner of a property does not have any impact on the right of the actual owner to assert his rights through the courts. In the event of an inconsistency between the entry in the Cadastre of Real Estates and the actual state of affairs, the courts must act according to the actual state of affairs.

Legal Review of Ownership Title

In order to determine the legal status of the real estate that is to be acquired, the investor should perform a legal review of the ownership title to the assets prior to the acquisition of the property. This step is of fundamental importance. Such a legal review includes an evaluation of all necessary documents filed with the Real Estate Cadastre (although other sources should also be consulted), determination of the history of the title in question, ascertaining whether or not the seller is the sole and unrestricted owner of the real estate being sold and a check on whether there exist any contracts, encumbrances or potential disputes that could limit the proper use of the real estate in the future.

Even if the ownership title seems to be all right, the use of the purchased real estate can be limited by a lease or other similar agreements that are concluded for a long period of time or can be terminated only with huge costs being incurred. On a change of ownership title to real estate all the agreements concluded that relate to that real estate are still valid.

Although it is not possible to achieve absolute legal certainty with regard to an ownership title to real estate in the Czech Republic, the determination of the facts below will provide a sufficient degree of legal certainty.

The archives of the Real Estate Cadastre constitute a source of information on real estate.

Because the current Real Estate Cadastre began functioning on 1 January 1993, information on properties prior to this date must be sought in older registers and records.

It should be noted that both the archives of the Real Estate Cadastre and the older registers frequently contain incomplete or inaccurate information. Consequently, it is essential to obtain additional information on a particular property from other state authorities (e.g., information on building permits can be obtained from the archives of the relevant Construction Office) as well as from the records of companies that were connected in some way to the property.

The aim of this investigative process is to determine if there were any past ownership disputes or conflicts that could in the future threaten the investor's rights.

PURCHASE CONTRACT

A purchase contract is the most frequent title for the transfer of the ownership right to real estate. Apart from specification of the real estate according to the records of Cadastre of Real Estate, only written form and authenticated signatures on the same deed are generally required in order for the purchase contract to be valid.

Since registration with the Cadastre of Real Estate usually takes from two to five months depending on the real estate's location (with the same period of uncertainty about whether the entry in the Cadastre will be permitted or not), special attention must be paid to the way in which the purchase price is paid. Practically all investors transfer funds to an attorney, notarial or bank custody (under an escrow account agreement.) Once they are registered as the sole owners of the real estate, or other conditions are fulfilled, the money is released to the seller.

REAL ESTATE ACQUISITION BY FOREIGNERS

According to Czech legislation, only residents (i.e. natural persons who have a permanent residence in the Czech Republic or legal entities which have their seat in the Czech Republic) and non-residents who are Czech nationals, may buy real estate, agricultural land or forest in the Czech Republic without any further conditions.

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Non-resident legal entities with branches in the Czech Republic which are registered in the Commercial Register of the Czech Republic may acquire real estate. Furthermore real estate can be acquired by Czech legal entities which are owned partly or fully by non-residents. In particular, there is no limitation on the purchase of real estate by subsidiaries established by non-residents as subsidiaries are considered to be residents.

The acquisition of real estate by non-residents is possible only for non-residents who are citizens of an EU country and who have acquired a residence permit in the Czech Republic (however it is just a formality for an EU citizen to acquire a residence permit in the Czech Republic).

Special rules relate to the acquisition of agricultural land and forest by foreigners.

PROPERTY TRANSFER TAXES

Real Estate Transfer Tax

For tax purposes, the transfer of real estate means the transfer or assignment of the ownership rights to real estate for a fee from one person/entity to another, including the settlement of shared joint ownership. Tax is also paid upon the exchange of real estate. Tax also applies to a free-of-charge constitution of a real burden when acquiring a real property by donation. Real estate transfer tax is generally paid by the transferor (seller).

The buyer (transferee) pays the tax in the case of an acquisition of real estate as an execution of judgment, condemnation, bankruptcy or settlement proceedings, or in a public auction. However, the tax may be paid by other persons as well.

The real estate transfer tax base is the real estate's sale price or the value of the real estate as determined by an expert's valuation, whichever is higher (the expert's valuation is an obligatory attachment to any real estate transfer tax return).

The tax rate is the same for all persons/entities and amounts to 3% of the tax base.

The taxpayer must submit a tax return by the end of the third month after the date of the receipt of the contract with a provision permitting the entry in the Cadastre of Real Estates (or another decision or deed confirming the ownership of the real estate) at the latest, and the tax must be paid within the same period.

Gift Tax

Gift Tax is imposed on the transfer of real estate for no fee. The tax base is the expert's valuation of the real estate. The tax rate depends on the value of the real estate and the degree of kinship and varies from 1% to 40%.

Value Added Tax

Transfer of land is VAT exempt with the exception of building plots. The transfer of buildings within three years of their acquisition or the issuance of use of permit are subject to 19% VAT (non-residential) or 5% (residential through 2007. Starting in 2008, the transfer of residential real estate will be subject to either 5% or 19% VAT, depending on the size of the real estate). Transfers of real estate three years after their acquisition are exempt from VAT

FINANCING

Loan/Credit/Leasing Agreements: These agreements are often used for real estate purchase financing, with no specific formalities and no legal fees related to such agreements.

Mortgage Agreement: The right of lien to the collateral (real estate) comes into existence on its entry in the Cadastre of Real Estate.

Taxes and Fees: There are no specific taxes/fees relating to the financing of the real estate purchase. There is a standard administrative fee of CZK500 for the petition for entry of the lien in the Cadastre of Real Estate.

LEASE AGREEMENTS

Lease: Lease contracts for both residential and nonresidential premises must be in writing and must contain essentials set by law. While the Act on the Lease and Sub-Lease of Non-Residential Premises is (in its most current wording) based on wide contractual freedom, the lease of residential premises is still strictly regulated.

Rent: The rent for non-residential and newly concluded residential premises may be freely negotiated. The rent set by "old" residential contracts may be increased within the frames set by law only and is still much lower than "new" market rents.

There are no specific tax/stamp duties connected with lease agreements. The lease of real estate is generally VAT exempt, however the lessor may opt for VAT (19%) when leasing real estate to another taxpayer.

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office@aktz.cz www.aktz.cz Triska & Zák law firm offers a comprehensive range of legal services to Czech and foreign clients. The firm was established in 2000 and operates from the very centre of Prague, where the Czech capital's legal and business community is found. Despite being a young firm we have established strong ties through seven years of service, both with clients, colleagues and associates in the legal as well as allied fields. The firm is ideally placed to meet all the legal requirements of both companies and individuals and the practice has developed in line with the rapid growth of the Czech economy. The firm is committed to providing a comprehensive legal service to its clients. We emphasize speed and complete commitment in resolving each individual case.

Our services

The core of our business is commercial fields of law, including commercial litigation and the settlement of disputes, corporate law and agenda, intellectual property as well as real estate and construction and labour law. We have experience in transactions as well as day-to-day consulting. We provide our clients with drafts and advice on all types of contracts and we take part in the contract negotiation process. Our lawyers do not merely assess issues from a legal point of view, but always take into account the complex commercial goals of the client. Our team is able to render legal services in Czech, English, German and Russian.

Real Estate & Construction

Our lawyers know and understand the real estate and construction business and the needs of our clients and are able to offer creative, cost-effective legal advice. Our experience not only enables us to provide legal services across the entire spectrum of real estate and construction matters, but also to provide practical business advice. We have developed a wide range of subspecialties and our efforts are coordinated in order to assess efficiently our clients' needs, devise appropriate legal strategies and meet our clients' objectives. We have advised clients whose primary business is real estate and construction, including developers, landlords, and property managers as well as construction firms and retailers.

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GENERAL

In order to acquire real estate in Germany, two steps are necessary. First, a contractual obligation (Titel), e.g. a notarized purchase contract is needed and second, a conveyance of property (Modus). The transfer of ownership is not completed by the mere occupation of the property, but only upon registration into the land register.

REAL ESTATE REGISTER

Under German law, any grant, transfer or limitation of rights in connection with real estate (e.g. ownership and mortgages) must be recorded in the relevant land register which is operated by the Local Courts (Amtsgerichte) in order to become effective. As long as a legal transaction is not registered, the party to the contract has only a contractual claim for performance against the other contracting party.

The rules and requirements for registration are the same throughout Germany and there is a Land Register in every local district. The beneficiary of a registration must file an application for registration (Umschreibungsantrag), a service usually provided by the public notary. On average, the registration process takes approximately one week.

SYSTEM OF REGISTRATION

All privately as well as state-owned land in Germany must be registered. All rights over land are required to be registered in order to be effective. In general, it is possible to create these rights through contractual agreements which only need to be notarized by a public notary.

Generally, a bona fide third party can rely on the correctness and the completeness of the recording in the land register.

Purchase Contract

For registration into the land register, a deed of title (e.g. a notarized purchase contract) must be constituted.

Only under specific circumstances is the notary public , who drafts the purchase contract, allowed to act as an escrow agent for monies paid towards the purchase price. The rights of the purchaser are protected by an immediate registration of a priority notice of conveyance in the Land Register.

Real estate contracts often provide for different warranty periods, depending on the issue warranted. The statutory warranty period for real estate is five years which can be extended or abbreviated by mutual agreement.

REAL ESTATE ACQUISITION BY FOREIGNERS

Generally, there are no restrictions regarding the acquisition of real estate by foreigners. Foreign firms must prove their legal existence and the power of

representation of those persons acting for the firm by certified documents. Usually an apostille is required.

PROPERTY TRANSFER TAXES & FEES

Real Estate Transfer Tax: The purchaser must also pay the applicable real estate transfer tax of min. 3.5% of the consideration (e.g. the price of the real estate).

Registration Fee: For the registration of the title transfer, the priority notice of conveyance; mortgages and any other registration in the Land Register a registration fee must be paid to the local court.

Gift Tax: The transfer of real estate without consideration triggers gift tax, which is calculated using a three-fold assessed value. The amount of tax is based upon the amount of the purchase and upon the degree of kinship. The German Federal Constitutional Court has decided that the taxation of real estate is unconstitutional. Therefore, a new code will be drafted. However, its content is not yet known and cannot be predicted.

Value Added Tax: In principle, deliveries and other services performed in Germany by an entrepreneur against payment within the scope of his business operations are subject to value added tax. Land transfers are an exception and are not subject to value added tax. However, the selling entrepreneur has the option to treat the transaction as taxable. A rented real property is usually considered as a non-taxable sale of the entire business ("Geschäftsveräußerung im Ganzen"). This requires higher efforts with respect to the structuring of the contract.

FINANCING

Loan Agreement: There are no specific formalities to be fulfilled with respect to loan agreements.

Leasing: Real estate transactions are also often financed through financing or operating leases.

Mortgage Agreement: The establishment of a contractual mortgage right on a property requires a certified deed which must be registered with the land register to become effective.

Taxes and Fees: The execution and registration of a mortgage triggers notary fees which depend on the nominal value of the mortgage and are governed by the German Notary Fees Act.

The court fee accruing for the registration of the mortgage into the land register depends on the nominal amount of the mortgage. The German Court Fees Act provides a degressive fee scale.

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LEASE AGREEMENTS

The most important types of lease agreements are tenancy agreements (Mietverträge) and usufructuary lease agreements (Pachtverträge). Tenancy agreements deal with the lease of an object for use against consideration. The latter deals with the lease of an object for use and profit against consideration.

Lease: In Germany, residential and commercial leases are governed by the tenant-friendly lease law. The corresponding regulations of the German Civil Code often apply in a way that cannot be waived by the parties of the lease agreement.

In principle, a lease agreement can be entered into with either a fixed or an indefinite term.

Rent: In principle, the rent may be freely negotiated and is usually paid in advance on a monthly basis.

Pursuant to the German Civil Code, the rent may be freely negotiated. Regarding residential leases, the rent either must be adequate or capped at an amount customary in a region.

The permissible amount for the adequate rent is calculated based on size, type, quality, location, as well as the accoutrement and state of preservation at the time the lease is entered into.

Residential leases can be terminated by the tenant by giving notice within a term of three months. Commercial leases can be entered into with a fixed term. When the length of the term is more than one year, the lease contract must be stipulated in written form. Otherwise it can be terminated within six months.

The adequate gross monthly rent consists of the rent plus service charges and VAT (if applicable). Under German Law, triple net leases are only valid if the costs of maintenance, which must be borne by the tenant, are defined and restricted in the terms of the lease contract.

VAT is payable dependent on the purpose of the lease. Leases for residential purposes are not subject to VAT. Leases for other purposes (e.g. of commercial rents) do not trigger VAT. However, certain kinds of commercial leases (not regarding tenants as e.g. banks, insurance companies and physicians) allow the landlord to opt for a VAT liability of the lease. In this case the rent is subject to VAT at a current rate of 19%.

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FPS Fritze Paul Seelig is one of the leading independent commercial law firms in Germany. With offices in Frankfurt, Hamburg, Munich, Berlin and Düsseldorf we are represented in many important locations in Germany. With more than 75 attorneys we develop practice-oriented and practical solutions. To ensure creative and comprehensive tailor-made consulting, tax advisors and accountants are also partners in our firm. We also have notaries in Frankfurt and Berlin.

With the rising demand for legal advice on real estate law, the real estate practice group specializes in providing project-related legal advice, primarily to owners, developers and investors.

When advising real estate developers, we generally first prepare and secure building rights under urban planning agreements and integrate such agreements into projectspecific property purchase agreements. We then negotiate (where applicable as part of a solicitation process) and draft lease and construction agreements. In the fastgrowing area of contract drafting and negotiation, the real estate practice group cooperates closely with our notary department, which presently consists of nine notaries. The real estate practice group also regularly counsels project initiators in connection with the negotiation of contracts with architects and project controllers. Many times clients request specific financing models requiring integrated solutions and industry-specific know-how. The focus of the real estate practice group therefore is to provide comprehensive real estate legal services on all civil law and public law issues arising in connection with real estate investments and construction projects. FPS advises clients on all legal and financial aspects of the real estate business arising in connection with large national and international real estate development projects.

FPS also specializes in providing comprehensive legal advice to investors and institutions on various questions of the investment business, ranging from the establishment of project companies to the financing, acquisition, sale, management, and leasing of real estate. Our clients include project sponsors and developers, financial institutions and financial advisers, investor consortia and independent investors, as well as public agencies in Germany and abroad. Well-versed in the areas of real estate, finance, corporate and tax law, our real estate team has the experience necessary to effectively counsel clients on complex transactions in this demanding and challenging legal field.

Dr. Bán György Ügyvédi Iroda Law Offices

GENERAL

For the ownership of a real property to devolve, in addition to the conclusion of the relevant contract, these condition precedents are necessary: (a) valid legal title (b) actual takeover of the property (c) registration of the tile with the land registry.

REAL ESTATE REGISTER

Similar to many other European jurisdictions, any transfer or limitation of rights in connection with real estate must be registered with the competent land registry in order to become effective vis à vis third parties. As long as a legal transaction is not registered, the party to the contract has only a contractual claim for performance against the other contracting party.

The procedural rules and formal requirements for registration are harmonized in all counties of Hungary. The beneficiary of a registration must file an application for registration with the competent land registry along with the statutory attachments as prescribed by law for the specific transaction. In the vast majority of land registry procedures, legal representation is mandatory.

On the day of filing the application for registration, this fact will be indicated on the land registry extract in the form of a "pencil registration," along with the brief description of the application. The time frame of the actual registration process varies greatly from region to region.

SYSTEM OF REGISTRATION

For the purposes of real estate registration, rights are created upon being recorded in the land registry. The two fundamental principles of the land registry procedure are public access and authenticity. Public access meaning that registers of real estate shall be public information, with authenticity meaning that real estate registration records shall be construed as authentic proof of registered rights and recorded facts.

In addition, if a right or a fact has been registered or recorded in the real estate register, lack of knowledge of such shall not constitute an excuse under any circumstances. Furthermore, rights registered and facts recorded in the real estate register for the benefit of a party acquiring in good faith shall be construed as true, until proven otherwise, even if such deviate from the actual legal status.

PURCHASE CONTRACT

Though generally the only formal requirement in order for a purchase contract to be valid is for it to be in writing, the Act on Land Registration procedures require that the signatures of the signatories be certified by either an attorney or a notary public. As a general practice, the buyer usually engages the attorney (or notary public), since the rights of the buyer are more likely to be safeguarded than those of the seller, who is well protected under the laws of the Hungarian Civil Code. However, the attorney drafting the contract is responsible by law for unbiased representation of both parties.

REAL ESTATE ACQUISITION BY FOREIGNERS

The acquisition of agricultural land by foreigners or legal entities is prohibited by the Act on Agricultural Land. There are only very limited exceptions; for example, an EU citizen is still allowed to acquire agricultural land.

As far as the acquisition of non-agricultural land is concerned, all foreigners are required to apply for a government permit after concluding the purchase contract. Experience shows that this government permit is generally granted if no apparent reason for denial prevails.

EEA/EU citizens and legal entities are treated as Hungarian individuals/companies when acquiring non-agricultural land. In the case where the buyer declares that the real property being acquired will serve as a principal place of residence, there is no need to obtain the above-mentioned government permit.

PROPERTY TRANSFER TAXES, DUTIES & FEES

Real Estate Transfer Duty: The buyer pays the applicable real estate transfer duty, which is determined as a certain percentage of the consideration (e.g., the price of the real estate). Should there be no consideration, the duty shall be calculated based on the actual value of the real estate. It is worth noting that the government authority has the right to determine the basis for the duty otherwise as stated in the purchase contract, based on the estimated value of the real property. The general rate is 10%, but in case of acquisition of apartments, it is 2% up to the limit value of HUF4,000,000 (EUR16,000), while 6% after the value exceeding this limit.

There are quite a few cases, when a more favorable rate applies, or no duty is payable at all. For instance, real estate agents enjoy a preferential rate of 2%, in case they meet the relevant criteria as set forth by the Act on Duty.

Gift and Inheritance Duty: The transfer of real estate without consideration or inheriting a real property triggers gift/inheritance duty. The amount of duty is dependent firstly upon the nature of the real property (agricultural, non-agricultural or apartment) and then on the actual value of the real estate as well as the degree of kinship.

Value Added Tax: As a general rule, the sale of a real property is taxable and thus subject to VAT at a rate of 20%. Transactions involving apartments are to a certain extent exemption from this general rule.

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Personal Income Tax: Private individuals selling their real property are subject to a personal income tax obligation. The general rate is 25% calculated on the basis of the purchase price. However, there are numerous circumstances (e.g., the length of the time the individual had owned the real property) which are taken into account and result in the reduction of the PIT payable. In some cases, no PIT applies at all.

Registration Fee: Upon submitting the application for registration to the land registry, a registration fee is payable, but this fee is largely nominal.

LEASE AGREEMENTS

The two most widespread types of lease agreements are tenancy agreements and usufructuary lease agreements. Under a tenancy agreement the tenant is entitled to use the real property against consideration, while in case of an usufructuary lease agreement the right of the tenant also extends to the profit and revenues generated from the real estate.

Lease: The general terms and conditions of a lease are set forth in the Hungarian Civil Code. However, a special act also applies to the lease of real property. It follows from the principle of freedom of contract that as a general rule the parties may deviate from the legal provisions; however, there are numerous provisions (mostly in favor of the tenant) from which no deviation is allowed.

As mentioned, the parties can freely negotiate the specific terms and conditions of the lease. This certainly applies to the rent as well as to the time frame of the lease.

It is very common that the lessor requires the lessee to place a certain amount (equal to the rent of one to three months) into an escrow account as a security for the fulfillment of his contractual obligations. The rent is then usually paid in advance every month.

In addition to the monthly rent, the tenant is obliged to cover the associated service charges. The parties may also agree that the tenant bears all costs and taxes occurring in connection with the leased property during the term of the lease.

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Since its establishment the Dr. Bán György Law Firm has represented clients in a full range of Hungarian and international legal matters. These include privatization, mergers and acquisitions, bankruptcy, and business reorganizations, joint ventures and various forms of direct foreign investment, litigation, commercial and banking matters, real estate acquisition and development.

The practice is directed primarily towards corporate, financial and international trade sectors. Projects of the firm have included representation of numerous American and European companies in connection with their investments in Hungary, including start-ups, acquisitions of, and investments in, existing business and privatization. Services provided have included negotiation and preparation, in English, German and Hungarian, of share purchase and joint venture agreements, shareholder agreements, employment and management contracts, loan agreements, issue of securities, and other commercial documentation, including conduct of extensive due diligence.

The fact that several of our clients have stayed with us for many years is positive evidence of their satisfaction. All of our colleagues have a strong business-oriented way of thinking, which helps us not only understand our clients' needs, but also find the best possible solution to their problems. We maintain close working relationship with our clients, also assisting them in their daily business issues.

The firm recognizes the need among corporate and financial clients for the highest quality legal advice in all jurisdictions, with the same guarantees and quality of service we offer in our domestic market.

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GENERAL

Real estate can be acquired in full ownership or in perpetual usufruct. When ownership is sold, registration in the Land and Mortgage Register is for evidential purposes only. In the case of perpetual usufruct, registration in the Land and Mortgage Register is necessary for the transfer to be valid. This can be a delaying factor in case of consecutive transfers.

PURCHASE CONTRACT

Real estate can be acquired on the basis of a sale contract, donation, inheritance, etc.

According to Civil Code rules, the contract for purchase of real estate must be made in the form of a notarial deed executed by a notary. A contract in any other form is null and void.

Before acquiring real estate, it is necessary to establish whether the land is intended for agricultural, industrial or construction use in the local development plan. An inquiry must then be made as to whether the seller has a legal title to the land and whether a local authority has first refusal rights with respect to the land in question.

If the other party to the transaction is not able to offer any of the documents and information listed below, then inquiries at the seller and local authorities will include the checking of:

- (a) Geodetic plans showing access of the land to public roads and proof of electricity, central heating installations, gas, water and sewage pipes
- (b) Land plot geodetic numbers and the exact measurements of the land
- (c) The Land and Mortgage Register number established for the land kept at the relevant District Court (a transcript from the Register should be obtained and the Register itself should be carefully examined)
- (d) Notarial deeds proving the seller's legal title to the

In principle, real estate owned by state or local authorities can be purchased only through an auction or tender procedure.

REAL ESTATE ACQUISITION BY FOREIGNERS

As a rule, under the currently binding regulations (the Act on Acquisition of Real Estate by Foreigners, further referred to as the "Act") foreign nationals (individuals and entities) willing to purchase real estate in Poland, must obtain a permit of the Minister of Internal Affairs and Administration.

Furthermore under the Act foreign investors must also obtain a permit from the Minister of Internal Affairs and

Administration for the purchase of shares in a commercial company that has its registered office in Poland, or for the execution of any other legal action that may concern such shares, if the company that is the owner or perpetual usufructuary of real estate in Poland will become, as a result of the above purchase or another action, a so called "controlled" company. In addition, the permit is required for the purchase or subscription for shares in an already controlled commercial company, with its registered office in Poland, if the company is the owner or perpetual usufructuary of real estate in Poland and the shares are purchased/subscribed for by a foreign investor who is not a shareholder in that company.

There are, however, numerous exceptions from this rule and the most important one concerns citizens and entrepreneurs (including companies) of the EEA countries. These citizens and entrepreneurs do not require any permit for the acquisition of real estate or shares in companies which own/hold under perpetual usufruct real estate, except in case of forest or agricultural real estate or in case of private individuals in case of the acquisition of so called "second houses."

PERPETUAL USUFRUCT

Perpetual usufruct is a right of a similar nature as the ownership right, although it is established for a limited period of time. It is governed by the provisions of the Civil Code and the Law on Real Estate Management.

Perpetual usufruct may be established on land owned by the State within the territories of cities (or outside cities but covered by local development plans) and land owned by local municipal authorities, as well as some other state or municipal land as provided in special regulations.

Perpetual usufruct is established for the period from 40 to 99 years. Upon expiration of this period, the perpetual usufruct may be extended for another period of up to 99 years (further extensions are also possible). The extension may only be denied where important social interest considerations are at stake.

Perpetual usufruct is established on the basis of an act or a contract. If the perpetual usufruct right is to be established on the basis of a contract it is subject to tender. Residential real estate may be released from this obligation by a governor of the province or local authorities provided the potential usufructuary is an entity whose statutory aim is to develop residential real estate and all its income is used for this purpose.

Establishment of perpetual usufruct is executed in the form of a notarial deed (entry in the Land and Mortgage Register is necessary). Establishment of perpetual usufruct entails transfer of ownership of buildings (or other constructions) to the usufructuary.

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Charges for the transfer of a plot of land for perpetual usufruct are collected as a one-time fee on delivery and annual fees thereafter. The first fee is payable in a lump sum not later than the execution date of the perpetual usufruct contract. The annual fees are paid throughout the term of the contract (by 31 March each year) starting from the year following that in which perpetual usufruct was established. The first fee corresponds to 15%-25% of the value of the land, while the annual fees vary from 0.3% to 3% of the value according to the purpose for which the property was delivered under perpetual usufruct.

A usufructuary may assign its rights, which in practice means these rights can be sold and inherited. In this respect the provisions governing the transfer of ownership apply, with the above mentioned exception that an entry in the Land and Mortgage Register is a condition for such assignment to be valid.

PROPERTY TRANSFER TAXES

In most cases the sale of land is subject to VAT and VAT is charged on the value of the developments (buildings, constructions, etc.) and on the value of the land itself. In some specific cases the sale of land or its perpetual usufruct is VAT exempt, and subject to a tax on civil law transactions at 2%. VAT exempt are, for example, the sale of undeveloped land other than building land or land designed for development projects.

A Polish tax resident selling real estate is taxed on the capital gain at the standard corporate income tax rate of 19%, except under certain conditions, such as private individuals selling their residence.

FINANCING

Commercial and residential underwriting is typically secured by mortgage.

Commercial loans usually require a pledge of shares from the SPV, where applicable.

In case of mortgage banks, under the Act on Mortgage Notes and Mortgage Banks, mortgages can be pooled and used to secure mortgage-backed securities.

LEASE AGREEMENTS

The commercial letting market can still be considered new in Poland and standard lease terms began to emerge only a few years ago. The following terms for modern office buildings are regarded as common features within a typical lease agreement:

 Since introduction of the EUR, most new leases have been denominated in EUR, but paid in PLN as regulated by Polish law. Older leases are typically denominated in USD.

- Rents are escalated by the European (Eurostat) or the U.S consumer price index.
- Service charges including water, electricity, heating, air-conditioning, service, cleaning, etc. are added to net rents and calculated according to the area leased. These rates generally vary from EUR3.50 to EUR5.50 per square meter per month.
- A charge for common space is usually added to the net office space. This charge is calculated based on the pro rata share of common space used (lift, lobby, reception). Such "add-on factors" generally vary from 5% to 10% of the leased area.
- In addition to rent and service charges, tenants are obliged to pay a 22% Value Added Tax (VAT)
- Landlords usually require tenants to provide a rental deposit or bank guarantee equal to three to six months rent.
- Leases range from one to 10 years, with typical contracts between three and five years.

Typical lease incentives include:

- Rent-free periods of three to nine months
- Fit out allowance
- Free parking spaces

Standard lease terms for retail space are quite similar to the ones in the office market. However, the typical lease length for retail space in modern shopping centers ranges from five to 10 years. Anchor tenants usually prefer 10year lease agreements with extension options, typically for an additional 10-year period.

Moreover, with the increasing supply of retail space, tenants have become more demanding and developers seeking attractive tenants frequently offer not only lower rental rates but also such incentives as:

- Rent free period ranging from one to two months for smaller shops and up to six months for larger units
- Fit out allowance at the level of EUR50-200 per square meter for large units and up to EUR600 per square meter for anchor tenants.

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Domanski Zakrzewski Palinka limited partnership (DZP) was founded in 1993 in Warsaw, Poland. Domanski Zakrzewski Palinka is the largest law firm in Poland. Our legal team is composed of more than 100 lawyers, working under the supervision of 12 partners. Our headquarters are located in Warsaw and we also have offices in Poznan and Wroclaw.

Our clients include Polish companies with Polish capital, Polish companies with foreign capital, as well as foreign investors operating in a number of areas, including banking and finance, construction, engineering, food processing, machine industry, stock market, tourism and real estate.

We are recognized as one of the market leaders in the field of real estate law. Recent transactions on which our firm advised include restitution of the Hotel Europejski to the heirs of its pre-war owners, sale of the Marriott hotel, acquisition of a logistics and storage centre, and office lease negotiations for a major foreign bank. In addition our firm provides ongoing legal advice to developers from such countries as France, Germany, the Netherlands, Spain, and the United States.

SERBIA & MONTENEGRO

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GENERAL

Individuals and legal entities may have ownership right on movables and immovables. An owner shall be entitled to possess, use and dispose of his/her property. Any individual or legal entity may have ownership rights over buildings, flats, business facilities and premises, agricultural land and other immovables, except over the natural treasures which are owned by the State. An easement, the right of real encumbrance and pledge right may be established over a property to which there is an ownership right.

ACQUISITION OF REAL ESTATE

The ownership right shall be acquired by the operation of law, by a legal transaction and by inheritance. Acquisition of realty is free from state control, except in cases specified by law.

The ownership right to immovables, on the ground of a legal transaction, shall be acquired by entry into the public register or other appropriate mode determined by law. In addition two other steps are necessary to acquire real estate: a contractual obligation and disposal of the real estate. Any purchase contract may serve as a contractual obligation, or any other contract which is aimed to cession of property.

Contract of acquisition of realty must be concluded in written form and signatures of subscribers must be validated by the State Court of law. Foreign natural persons and legal entities may, by way of legal transaction, transfer the right of ownership onto a local person, as well as onto a foreign person eligible to acquire the right of ownership.

Building Land

Building lands are those below constructed objects and lands which these objects need for ordinary usage.

Building lands are owned by the State and cannot be objects of acquisition by natural individuals or legal persons. A new law in preparation predicts privatization of building lands.

Both individuals and legal persons are entitled to longterm usage of building land and de facto this right of usage is equal to right of ownership. Owners of objects built on these lands must pay a special tax for the usage of building land.

Agricultural Land

Agricultural land cannot be owned by foreign individuals or legal persons.

Agricultural land is State property and acquisition is prohibited.

REAL ESTATE REGISTER

The Cadastre of Realty is in charge of realty registration for territory in the Republic of Serbia. These evidence and rules of registration are integral for all territory in the Republic of Serbia. Data on realty and ownership rights on real estate recorded by Cadastre are public and must be treated as authentic in case of realty acquisitions and other relations where these data can be used.

The Cadastre's registration includes information about realty ownership and other absolute rights of the owner, some of the obligatory rights on realty, the right of real encumbrance and restrictions on realty's acquisitions. For ownership registration with Cadastre, contractual parties need original contract and certification on liquidated public duties.

REAL ESTATE ACQUISITION BY FOREIGNERS

Under the terms of reciprocity, foreign individuals may acquire ownership rights on realty in the territory of the Republic of Serbia. Legal entities conducting business in the Republic of Serbia may, under the terms of reciprocity, acquire the ownership realty rights for territory in the Republic of Serbia necessary for their business activity.

Interested parties may request information on reciprocity from the Republic agency in charge of matters of justice. These countries are: Australia, Austria, Bosnia, Czech Republic, France, Croatia, Greece, Italy, Canada, Cyprus, Hungary, Poland, Ireland, Romania, Russia, USA, Germany, Switzerland, Sweden, Ukraine and Great Britain.

A Republic agency in charge of matters of trade shall present an opinion on whether the type of immovables is indispensable for performing the activities of the foreign natural person or the legal entity.

The agency responsible for registering rights on immovables shall deliver the data on effected filing of the right of ownership of a foreign citizen within 15 days of the effected filing, to the appropriate Republic agency in charge of matters of justice keeping the record thereof.

The law, in exception, may provide that a foreign natural person or legal entity may not acquire ownership rights over immovables located in certain areas of the Republic of Serbia.

TAXES

Property tax must be paid for next rights on realty:

- ownership
- · the right of real encumbrance
- easement

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- time-sharing
- · long term lease or ground rent

Realty used as tax base are: lands, buildings, flats, business chambers, garages, buildings and chambers for vacation and other objects and its parts.

A taxpayer is every domestic and foreign natural or legal person who is entitled on any right on realty which is located on territory of the Republic of Serbia.

The base for realty property tax is the realty's market value on December 1 of the previous year.

The property tax ratio for taxpayers obligated to maintain accountancy books is 0.40%.

For taxpayers not obligated to maintain accountancy books, property tax is calculated as follows.

| Tax Base | Tax Amount |
|--|--|
| < CSD6,000,000 | 0.40% |
| from CSD6,000,000 to CSD15,000,000 | CSD24,000 + 0.80% on amount over CSD6,000,000 |
| from CSD15,000,000 to CSD30.000.000 | CSD96.000 + 1.50% on amount over CSD15,000,000 |
| > CSD30,000,000 | CSD321,000 + 3% on amount over CSD30,000,000 |

Foreign persons – natural or legal – are responsible for property tax for ownership or other right just on realty which is located on territory of the Republic of Serbia.

Real estate transfer tax must be paid in these cases:

- · transfer of absolute rights on realty
- · transfer of usage right of building land

Foreign persons — natural or legal — are responsible for real estate transfer tax for transfer of ownership or other right just on realty which is located on territory of the Republic of Serbia.

Tax base for realty transfer is the agreed contractual price at the moment of arrival of tax duty.

Tax ratio is established as proportional and reaching:

- for transfer of absolute rights 5%
- for transfer of rights on agricultural land 2.5%

Value Added Tax

A taxpayer shall be a person independently engaged in the trade of goods and services, within the framework of his activity:

 the first transfer of the right of disposal relating to newly constructed structures or economically indivisible entities within the framework of such structures, 2) the first transfer of the owner's share in newly constructed structures or economically divisible entities within the framework of such structures.

The VAT rate is 8%.

HYPOTHECATION

Hypothecation is a pledge on realty as security for a debt. A person entitled to this right may sell a realty which is hypothecated and compound his debt secured by hypothecation.

The object of hypothecation might be:

- 1) immovables (ownership on lands, building, etc.)
- 2) specific parts of immovables
- 3) co-ownership ideal shares on immovables
- 4) specific parts of buildings which are under ownership
- 5) immovables under construction or specific part of immovables under construction

LOANS AND LEASING

Loan contracts might be concluded by any domestic or foreign person. There are no specific formalities to be fulfilled or needs for registration by state authorities. A contract is mostly concluded in written form and contractual rent is negotiable.

A leasing contract as the basis of a legal transaction which has to result on realty acquisition is not allowed by Serbian state law.

TOURISM-RELATED ACTIVITIES

An individual or legal person engaged in tourist or catering activities may grant a long-term lease on a tourist or other related facility to a foreign individual or legal entity under conditions set out in a written agreement.

A long-term lease may be concluded for a minimum of five and a maximum of 30 years. Upon expiry of the lease period, the lease may be extended. At the request of the lease-holder, the long-term lease shall be entered into a public register. A registered long-term lease shall have legal effect also on the subsequent acquirer.

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lalinlaw@neobee.net www.lalinlaw.com Lalin Law Office was established in Novi Sad in 1986. Through its affiliated offices in Belgrade and Podgorica the firm is capable to handle legal assistance in all major business and commercial centers in Yugoslavia (Serbia and Montenegro). Today, the firm has a staff of five - including three attorneys and one legal secretary.

The firm provides complete legal services to its clients, primarily in corporate, financial and international trade sectors. This includes the negotiation and preparation of joint venture agreements, direct foreign investments, privatization, mergers and acquisitions, commercial and banking matters, real estate acquisition and development and litigation. The firm has experience serving clients before the International Court of Arbitration with International Chamber of Commerce in Paris, France. The firm also serve as foreign legal counsel for EBRD (European Bank for Reconstruction and Development).

The firm has long term experience in serving foreign clients from more than 15 countries in North America and throughout Europe.

GENERAL

To purchase and register real estate in Turkey, there are several steps and formalities that must be or are suggested to be completed such as:

- Signing a purchase contract which stands as the official document stating all the information about the real estate, the buyer, the seller and the terms of payment
- Retrieving the certificate of value from the municipality prior to the purchase as a property cannot be sold for less than its established value at the municipality
- Obtaining DASK (Obligatory Earthquake Insurance Certificate) and submitting it to the Land Registry (only for property that will be used as residence)
- Registering the property in the municipality department and the land registry office
- · Paying taxes
- Registering electricity, water supply and disposal services.

If the property is located in a military zone, an application is submitted to the Land Registry Office in order to receive military permission.

Certain concurrent expenses should be taken into consideration before the purchase of any real estate. Some are:

Property Tax: 0.1 to 0.3 % of the property value depending on whether the property is land, residence or work place and to be paid before end of May each year.

Expenses: electricity, water, gas and disposal services.

Telephone: one can get a telephone line in his/her name only if s/he holds a residency permit. Therefore, a real estate purchase transaction should be considered most of the time hand in hand with a residency permit application.

REAL ESTATE ACQUISITION BY FOREIGNERS

With the reservation of reciprocity and compliance with legal restrictions, a foreign natural person can acquire real estate for the purpose of using it as a residence or business in Turkey. Each aim is separate and must be registered for these purposes in the implemented development plans or localized development plans. The same conditions shall be stipulated in the establishment of limited real rights on real estates.

Companies having legal personality established in foreign countries according to the laws of these countries can acquire real estates and limited real rights on real estates in Turkey according to the provisions of special laws. The Council of Ministers is authorized to determine the places where foreign natural persons and companies having legal personality established in foreign countries according to the laws of these countries cannot acquire real estates and limited real rights on real estates within the areas in terms of:

- irrigation, energy, agriculture, mining
- · protected areas
- religiously sacred and culturally featured areas
- special protection areas due to flora and fauna features
- strategic areas due to public interests and country security by means of the proposals of relevant public institutions and organizations with registry-based coordinated maps and plans

Proposals of the public institutions and organizations within these scope shall be examined, appreciated and submitted to the Council of Ministers by means of a commission that carries out studies within the authority set out in this paragraph and constitutes relevant representatives of administration in the structure of the ministry that General Directorate of Land Registry and Cadastre is related to.

Map and coordinate values concerning the military forbidden zones, military and private security zones and strategic zones that are determined after the enforcement of this law and their alterations shall be given without any delay by the Ministry of National Defense to the ministry that General Directorate of Land Registry and Cadastre is related to.

The parcels needed to be expropriated or to be annotated on land register in the areas determined above shall be notified by relevant institutions to relevant Land Registry Offices.

REAL ESTATE REGISTER

In contrast to most European countries, the formal entry in the property register in Turkey is not performed by a public notary, but by an official of the Land Registry Department. It is a legal requirement for both sides (the seller and the buyer) to be present at the entry. However, it is possible to authorize another person with a special power of attorney. The delivery of the deed of transfer does not require the intervention of a public notary in Turkey. The only applicable stipulation concerning the delivery is that it takes place in writing. After the entry and delivery, the property register issues a proof of ownership or property deed which is called 'Tapu.'

The major legal restrictions mentioned above may in turn change or even be (partly) cancelled by more recent

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legislation which is closely related to the promotion of the economic position of Turkey or the adjustment of regulations and laws to EU or tourism promotions for foreigners.

PROPERTY TRANSFER TAXES

Corporate tax is charged at the standard rate of 30% (previously 33%) and is payable by Turkish companies and non-resident companies operating through a Turkish branch. Branch profits are also subject to withholding tax at 10% when remitted abroad, or to entities which are not subject to Turkish tax.

Rental payments made by companies which are subject to Turkish corporation tax to non-resident entities with respect to direct use, letting or other use of Turkish real estate are subject to withholding tax at 20%.

Capital gains on the disposal of real estate are subject to corporation tax at 30% regardless of the residency of the vendor.

Stamp duty of 0.75% is charged on the disposal of Turkish real estate provided that a sale and purchase agreement has been executed. Both parties to a transaction are jointly liable for the relevant stamp duty. In addition, a "title deed charge" of 1.5% of the value of the real estate will be payable by both the vendor and the purchaser on registration of the transaction at the Land Registry (the total charge to vendor and purchaser is therefore 3% of the real estate value).

There are exemptions to the taxes under certain conditions.

Value Added Tax

VAT registration is compulsory for companies resident in Turkey and non-residents operating through a Turkish permanent establishment. VAT registration occurs automatically on the incorporation of a Turkish company.

The sale of Turkish real estate (including land) is subject to VAT at 18%. The sale of buildings (not land) of less than 150 square meters is subject to VAT at 1%.

Property rental payments are generally subject to VAT at 18%. Such VAT should be recoverable for companies via the "reverse charge" mechanism.

FINANCING

Mortgage

An amendment on 23 February 2007 states that foreign real persons and foreign commercial corporations can have a mortgage registered in principle. This rule is also related to the "mortgage with a foreign currency practice" regulated recently by the New Turkish Civil Law. According to this rule, to place a mortgage in a foreign currency, the underlying loan must be from a (foreign or local) corporate lending institution and be landed in a foreign currency or in Turkish Lira tied to a foreign currency exchange rate.

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counsel@yarsuvat-law.com.tr www.yarsuvat-law.com.tr The Yarsuvat & Yarsuvat Law Firm is the successor of the Yarsuvat Law Firm that was founded in 1942 by Ihsan Yarsuvat. It was restructured in 1994 by Prof. Dr. Duygun Yarsuvat and Ihsan Ömür Yarsuvat, to conduct its business as the Yarsuvat & Yarsuvat Law Firm.

The Firm primarily caters to a clientele comprised of foreign investors in Turkey and their local subsidiaries. Clients also include domestic companies that are engaged in cross-border transactions. As such, the Firm offers comprehensive consulting services to inbound and outbound investors as well as legal representation in cases of dispute.

In 2004 Prof. Dr. Duygun Yarsuvat was elected President of Galatasaray University in Istanbul for a period of four years. Consequently, pursuant to the Turkish law, he holds a leave of absence from the Yarsuvat & Yarsuvat Law Firm and will resume work at the Firm by January 2008. Ayse Nil Yarsuvat is the managing director and Ihsan Ömür Yarsuvat is entrusted with the legal matters as the senior attorney and partner.

The Firm's expertise includes administrative law, alternate dispute resolution, capital markets, competition law, construction, contracts, corporate law, creditor's rights and bankruptcy, employment law, energy and natural resources law, environmental law, financial services, civil and criminal litigation, pharmaceutical and health law, intellectual property law, international business transactions, entertainment, media and communications law, mergers and acquisitions, privatization and tenders, product liability, real estate law, telecommunications law, transportation law.

The Firm's correspondence languages include English, French and German.