



Gide Loyrette Nouel

Real Property Investment Law in Bulgaria



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TITLE

Full ownership

General

Full ownership of real property is recognised under Bulgarian law. Ownership can be private or public. Further, ownership rights benefit from constitutional protection.¹ Private ownership is generally inalienable. However, private properties can be subject to alienation for state and municipal needs. Such alienation must have legal grounds and the state or municipality must demonstrate that the needs could not be satisfied otherwise. In the case of alienation fair compensation must be offered to the owner of the real property.

Acquisition

Real property in private ownership is acquired through an acquisition agreement in form of a notary deed. The deed is signed between the parties before a notary public. State or municipal real property is acquired by virtue of a written contract. The respective title documents (being a notary deed or written contract) are subject to registration with the recordation office at the recordation agency.

Limitations on acquisitions

Before the accession of Bulgaria to the EU ownership of land could only be acquired by Bulgarian citizens and companies duly registered in Bulgaria. Bulgarian companies 100% owned by foreign entities or individuals were entitled to acquire land as Bulgarian entities. Foreigners and foreign entities had limited real property rights (right of construction, right of use) and could obtain ownership over buildings. In fulfilment of Bulgaria's obligations under the EU Accession Agreement and the Protocol for the transitional measures, respective amendments were made to the Bulgarian Constitution.²

Since 1st January 2007, foreigners and foreign entities are entitled to acquire ownership rights over land in the following cases:

- 1) under the terms and conditions related to the EU accession;
- 2) on the grounds of international agreements and treaties, duly ratified, promulgated and entered into force; and
- 3) in cases provided by the law of inheritance.

Bulgaria, however, is entitled to restrict the acquisition of land for second homes of EU citizens and EU entities for a 5-year period from the date of the accession; that is until 1st January 2012. This restriction is not applicable with respect to EU citizens with a duly issued resident permit. An EU citizen with a duly issued resident permit is entitled to freely acquire ownership over land.

¹ Article 17 of the Bulgarian Constitution.

² Article 22 of the Bulgarian Constitution.

Bulgaria has restricted the acquisition of an agricultural and forest land for a 7-year period after the accession; that is until 2014. This reservation shall not be applied with respect to independent agricultural producers who wish to stay permanently in Bulgaria.

Usually, investments in real property and development projects are made through local companies established in Bulgaria. A Bulgarian company is free to acquire real property in Bulgaria regardless of the nationality of its shareholders.

Protection of ownership by courts

Bulgaria courts recognise private ownership of real property.

Real property in Bulgaria is still undergoing a process of restitution. It is advisable to check whether there are any restitution claims or State or Municipal ownership deeds before entering into negotiations for the acquisition of real property.

LEASES

Leases over real property are governed by general provisions of the Bulgarian Contracts and Obligations Act. Financial leasing of assets (both movables and real property) is regulated by the Commercial Act.

Financial leases

Financial leases are governed by the Bulgarian Commercial Act.

Operational leases

The law defines the operational lease as a contract pursuant to which the landlord undertakes to provide an item for use against payment. The distinction of the financial lease, is that a financial lease is a contract pursuant to which the landlord undertakes to obtain an item from a third party under terms specified by the tenant, and to provide that item to the tenant for use against payment. In both the operational lease and the financial lease the tenant may acquire the item during the term of the contract or after its expiration. To the contrary, the civil law lease does not customarily grant any purchase option to the tenant.

COMMERCIAL LEASES

Specific statute

The commercial lease is regulated by the Bulgarian Commercial Act.³ However, in practice, the Commercial Act regime is applicable mostly to movable assets. The commercial leasing of real property generally applies the general legal framework for the civil lease as regulated by the Contracts and Obligations Act.

Duration

The maximum term of a civil lease agreement is 10 years. If the lease agreement is concluded for a longer term it is considered valid for a 10 year term. There is a legislative reform to abolish the 10 year term. It is expected that the limitation of term will be abolished.

The term of a leasing agreement is not limited by the Commercial Act.

³ Chapter 23 of the Bulgarian Commercial Act.

Pre-emption right of the tenant

Bulgarian law does not grant tenants any pre-emption rights over commercial premises.

Rent and rent cap

Rent is freely determined by the parties. Bulgarian law does not set any rent caps.

Rent review

The parties may provide for indexation clauses. Usually, the official inflation rate announced by the National Statistical Institute is used. However, the parties may use any other Bulgarian or foreign index.

Costs are rechargeable to tenants

As a rule, all costs paid by the landlord and related to the utility services (electricity, water and gas) are rechargeable to the tenant or directly paid by the tenant to the respective utility companies. The expenses for local tax are paid by the landlord and not generally rechargeable. The landlord of a financial leasing may recharge local tax to the tenant.

Small repairs related to damages which are caused by conventional use, such as dirty walls in the rooms, corrosion of faucets, door locks, blockage of chimneys etc., shall be at the expense of the tenant. The repair of all other damages, if they are not caused through the tenant's fault, shall be at the expense of the landlord. If the landlord fails to make these repairs, the tenant may have the right to claim damages. If the tenant makes the repair himself with due diligence he may deduct the cost of the repair from the rent.

Improvements

The tenant must hand over the premises in the condition in which he took them over, allowing for usual wear and tear if not agreed otherwise. The tenant may carry out improvements and alterations to the leased premises with the landlord's consent.

Transfer of real property by the landlord

In case of transfer of ownership of the leased property the rights of the tenant depend on whether or not the lease agreement was registered with the local recordation office. If the lease agreement is duly notarised and registered with the recordation office then it shall be binding with respect to the new owner for the respective term stipulated in the lease agreement. If the lease agreement is notarised but not registered the lease agreement shall remain in force with respect to the new owner for no longer than 1 year as of the date of transfer of ownership. In case the lease agreement is just signed without notarisation and registration upon the transfer of ownership the lease agreement is converted into an agreement for indefinite term and could be terminated by the new owner with one month notice.

Transfer of lease by the tenant

The transfer of the lease agreement by the tenant without the prior consent of the landlord is not permitted.

Sublease

Regarding the civil law lease, if not agreed upon otherwise, the tenant may sublease parts of the leased property without the consent of the landlord. The tenant remains responsible for his obligations under the lease agreement.

The subtenant shall not have more extensive rights than the tenant as to the use of the real property. The subtenant shall be liable to the landlord only for payment of rent which he himself owes.

The consent of the landlord is required to sublease property that is used through a commercial leasing arrangement.

TAX**Transaction costs***Sale of land and buildings*Transfer tax

The sale of real property is generally subject to transfer tax. Transfer tax is levied at a rate of 2% of the purchase price agreed between the parties or estimate according to the tax evaluation of the property, whichever is higher.

Generally, the transferee has the legal obligation to pay the tax, unless the parties have agreed to share the tax. The tax should be paid on the day of execution of the notary deed. The payment is condition precedent for the registration of the transaction with the recordation office.

The following sales of real property are exempt from transfer tax:

- the real property is contributed to the share capital of a company by means of contribution in-kind. In such a case the specific procedure provided for in the Bulgarian Commercial Act has to be observed and a notary deed should not be drafted; or
- the real property is transferred between two companies pursuant to a merger, a de-merger or a partial business transfer.

VAT

The VAT rate is 20%.

According to the VAT Act transactions involving development land⁴ are VAT taxable except when the transaction concerns land adjacent to used buildings.

In general, land transactions and limited real property rights over land transactions are supplies free from VAT. For the purposes of VAT Act “land” is defined as agricultural land, farming land, woodland and forest. However, the seller is free to elect such transaction as VAT assessable.⁵ The establishment of right of construction is considered VAT exempted until the completion of the basic construction. Transactions involving used buildings or their parts are VAT exempt.

⁴ The precise definition is provided by the Spatial Development Act.

⁵ Article 45(7) of the VAT Act.

Taxation of capital gains realised by a legal entity

Capital gains arising from the sale of land and buildings are taxed at the usual corporate tax rate of 10%. If the capital gain is realised by a foreign legal entity the respective double taxation treaty should be checked.

Leases*VAT*

As a general rule leases of land and leases of building or a part for residential purposes are VAT exempt provided that the tenant is an individual not merchant.

Corporate income tax

Rent constitutes revenue for the landlord and is tax deductible for the tenant. A special regime applies to improvements made by the tenant.

Land revenue tax

There is no land revenue tax in Bulgaria.

Real property tax

The owners or the users of real property have to pay:

- local real property tax at a rate of 0.15 % of the annual tax evaluation of the real property; and
- local household waste fee, the rate of which is determined on an annual base by the respective town / municipal council.

Exemptions

No local taxes are levied upon agricultural lands and forests, except in case the latter are developed. Further, real property with a tax evaluation up to BGN 1,680 (c. EUR 860) is exempt from local real property tax. Local real property tax is due on new buildings from the month following the month of completion of the building or its operation.

Payment of the tax

The real property tax is payable in four equal instalments until 1st February, until 31st March; until 30th June; until 30th September and until 30th November of the year for which the tax is due.

Others

There are no other applicable taxes.

LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS**Notary fees**

The amount of the notary fee is calculated on the basis of the transaction value. The maximum notary fee cannot exceed BGN 3,000 (approximately EUR 1,500).

Lawyers

There are no statutory restrictions on lawyer's fees.

Land registry

The charge for registration into the land registry held by the recordation office is 0.1% fee based on the purchase price agreed between the parties or estimated according to the tax evaluation of the property, whichever is higher.

Publication

There are no statutory publication requirements.

SECURITY USED IN REAL PROPERTY FINANCINGS

Mortgages, right of retention, assignment of ownership, pledges of property and guarantees are the main securities used in real property financings in Bulgaria.

Mortgages

A mortgage is created on the basis of a notary deed.

Mortgages on real property, flats or non-residential premises are subject to registration with the local recordation office. The mortgage notary deed has to be submitted for registration with the recordation office not later than 3 pm of the date of its execution by the parties before notary public. The process of recordation requires not more than 3 working days.

The rank of the mortgage depends on the date and time of the application for registration with the recordation office. This rank cannot be altered by contractual agreement.

Right of retention

The right of retention is governed by the Commercial Act and the Contracts and Obligations Act. There are no specific regulations with respect to the right of retention in case of lease relation. Generally, the landlord has no right of retention with respect to the movable assets of the tenant as a security for the payment of the lease price or any other receivable related to the lease relation.

Assignment of a right of ownership

Assignment of the right of ownership from the debtor to the creditor is not regulated by the Bulgarian law. There is similar mechanism namely – the transfer of ownership with a back purchase option, however it is allowed only in relations between merchants.

Bank accounts

Usually a lender will take a pledge over the debtor's deposit account. Banking expenses, formalities as well as the type of security used vary from one bank to another.

Additional security*Pledges over shares*

Bulgarian law provides for different formalities and costs depending on the type of company (limited liability company (in Bulgarian "дружество с ограничена отговорност") or joint stock company (in Bulgarian "акционерно дружество") and on the type of securities (materialised or dematerialised). The issue is regulated by the Special Pledges Act and the Commercial Act.

Limited liability company

Shares in limited liability company are pledged by virtue of a written agreement with notarised signatures. All of the facts required by the law to be filed to record a pledge of equity shares, should be recorded with the trade register.

Joint stock company

The formalities applicable to the pledge of materialised shares (in Bulgarian "налични акции") and "dematerialised shares" (in Bulgarian "безналични акции") are different.

The pledge of "materialised shares" is completed upon endorsement. No particular costs are involved.

The pledge of "dematerialised shares" is completed upon registration of the pledge with the central depository. The pledge is subject to registration with the book of shareholders of the company held by the depository.

Guarantees

Corporate guarantees are not governed by the Bulgarian law. Therefore, this security instrument is used mainly when issued by banks. In case of companies or individuals instead of guarantee promissory note is used being out-of-court ground for issuance of writ of execution.



About the Law Firms

Gide Loyrette Nouel is an international law firm that has been advising real estate investors since 1920. Gide Loyrette Nouel has been present in Central and Eastern Europe since 1991.

Penkov, Markov & Partners is a Bulgarian law firm that has been advising real estate investors throughout Bulgaria since 1990.

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