



Gide Loyrette Nouel

Real Property Investment Law in Croatia



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Contents

TITLE 3

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION 4

THE DEVELOPMENT OF LAND 4

LEASES 5

COMMERCIAL LEASES 6

TAX 7

LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS 9

SECURITY USED IN REAL PROPERTY FINANCING 10

TITLE

Full ownership

General

Full ownership is recognised under Croatian law without any restrictions for all types of real property. Ownership is protected by Article 48 of the Croatian Constitution. An owner may only have his property expropriated for a fair and prior compensation. The Croatian Constitution guarantees foreign investors' rights to withdraw invested capital from Croatia.

Ownership of land

In Croatia, land is privately owned or state owned. Privately owned land is divided into two principal categories: agricultural land and other land. Other land is either constructible or not constructible land.

Ownership of buildings

The general principal is that all buildings and structures illegally erected belong to the owner of the land. The owner of the building is only entitled to claim fair compensation. If the owner of the land is aware of the building's construction on his land and does object against it, the owner of the building becomes the owner of the land, provided that the owner of the building has acted in good faith. In this case it is the initial owner of the land that can claim fair compensation.

Acquisition

In Croatia the acquisition of real property requires a written agreement¹ in the form of a notarial deed. The transfer of ownership occurs by its registration in the relevant cadastre² or by its registration with the competent court³. Most but not all real property is recorded in the cadastre. Croatian law allows an undisturbed possessor (natural and legal persons) to acquire ownership of real property after 20 years of continuous, evident and non doubtful possession.

Limitations on acquisition

Foreign individuals and legal persons are authorized to acquire real property in Croatia under the condition of reciprocity and subject to the prior approval of the Ministry of Justice.⁴ If an approval is rejected, that foreign person is prohibited from requesting an approval for the same real property within a period of 5 years.

Foreign individuals or legal persons cannot acquire ownership of real property situated in areas protected for the purposes of national security.⁵ In addition, foreign individuals or legal persons are not allowed to acquire agricultural land in Croatia.⁶ All these limitations may be avoided by establishing a Croatian company to acquire the real property.

¹ Article 115 of the Property Act 1996.

² Article 119 of the Property Act 1996.

³ Article 120 of the Property Act 1996.

⁴ Article 356 of the Property Act 1996.

⁵ Article 358 of the Property Act 1996.

⁶ Article 1 of the Agricultural Land Act 2001.

Protection of ownership by the courts

The courts in Croatia protect the ownership of real property.

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION

The sole interest in real property capable of registration in the land register is an easement. It can be granted either by the agreement concluded by the parties or by a court decision. It is in general granted for an indefinite period when resulting from a court decision and for a definite period when granted by the agreement. An easement, as a right which affects the property of land, is transferable with the land. The purchaser acting in good faith which acquires the land encumbered with an easement has the same obligations towards the beneficiary of the easement as the initial owner. Therefore, the acquisition of land or buildings requires a careful examination for the existence of easements.

Another interest in real property capable of registration is a concession of public land. A concession is registered with the special register of concessions kept by the Ministry of Finance. The concession is granted by the decision of the Croatian Parliament on the proposal of the Government. It cannot concern forests. The concession can be granted for a maximum period of 99 years either to a Croatian or foreign legal person or individual. The agreement on the concession is concluded by the Croatian Government. Land encumbered with a concession right is state owned land which is not purchasable.

THE DEVELOPMENT OF LAND**Rezoning of agricultural land**

Agricultural land can be rezoned to buildable land after obtaining of a building permit and conforming the land with the master plan.⁷ In this occasion, a 5% contribution is paid by the investor. The 5% contribution is assessed on the market value of the land as determined by the relevant tax authorities.

The master plan and local plan

Under Croatian law, land zoning and the issuing of building permits ought to comply with the local plans which ought to comply with the Master Plan Act 1994 (as modified in 2004).

Building permitting process

A building permit is issued by the national office in charge of building permits in accordance with the Construction Act 2003. The investor ought to submit in writing the relevant documents, which include the plan of the building and the title demonstrating his property right over the land (an excerpt from the land register). The building permit is issued by the Ministry of Industry and Communications for structures of a particular interest for Croatia (e.g. roads, industrial buildings etc). The investor is obliged to start the construction works within two years as of the issuing of the building permit, otherwise the permit is annulled.

Provided that the building conforms to the initial building permit, a use permit is issued for this building by the same authorities that issued the building permit. The conformity of the building is inspected by the relevant authorities within 30 days of the investor's application for the obtaining of the use permit. The use permit is issued or denied within 30 days from the end of the inspection of the building.

⁷ Article 18 of the Agricultural Land Act 2001.

LEASES

According to Croatian law and jurisprudence a lease is a contractual right *in personam* to occupy a real property. This right is not capable of registration as an interest in the real property. Therefore, a lease agreement creates a contractual possession of real property but does not affect the ownership *in rem* of a real property. The Financial Leasing Act 2006 creates financial leases which may contain an option to purchase a real property at the end of the lease term. Croatian law recognises four categories of leases: leases of agricultural land, commercial leases, financial leases and leases of apartments.

Leases of agricultural land

A lease of agricultural land is strictly regulated.⁸ Agricultural land (either privately or state owned) may be leased following a decision issued by the relevant municipal council. The lease period may not exceed 3 years. The leasing of agricultural land is subject to a public auction where the best offer wins.⁹ The relevant municipality does not determine the rent due under a lease of agricultural land because the lease is concluded after an auction at the best offer.

Commercial leases

Commercial leases in Croatia are regulated by a specific act.

Financial leases

In Croatia financial leasing of real property is regulated by the Financial Leasing Act 2006.¹⁰ The Financial Leasing Act 2006 recognises two types of lease:

- a simple lease where a rent, which is not necessarily related to the overall value of the real property leased, is paid by the tenant to the landlord. The tenant is granted no option to purchase the real property at the end of the lease;

a financial lease where a rent related to the overall value of the real property is paid by the tenant to the landlord. The tenant is granted an option to purchase the real property at the end of the lease.¹¹

Financial leasing in Croatia can only be performed by:

- Croatian companies duly registered for financial leasing activities;
- companies established in the EU which are registered for financial leasing activities;
- Croatian branches of the companies established in the EU which are registered for financial leasing activities;
- banks established under Croatian law, banks established in an EU member state or their Croatian branches.¹²

Leases of apartments

The Leasing of Apartments Act 1996 requires that the lease of apartments are concluded in writing for a definite or indefinite period. The rent is freely determined by the parties and can be reviewed only once per year. If reviewed, the rent cannot be increased by more than 20% of the average increase observed in that particular area. In case of death of the tenant, the lease is transferred to the spouse.

⁸ Article 1 of the Agricultural Land Act 2001.

⁹ Article 10 of the Agricultural Land Act 2001.

¹⁰ Article 2 of the Financial Leasing Act 2006.

¹¹ Article 5 of the Financial Leasing Act 2006.

¹² Article 6 of the Financial Leasing Act 2006.

COMMERCIAL LEASES

Specific act

In Croatia commercial leases are regulated by the Lease and Sale of Business Premises Act 2004 and the general provisions of the Obligation Act 2005.¹³

Form

A commercial lease agreement must be concluded in writing.¹⁴

Duration

The term of a commercial lease can be definite or indefinite.

Termination

A commercial lease for a definite term automatically terminates at the end of the term.

Unless otherwise agreed by the parties a commercial lease for an indefinite term can be terminated by a three months notice given by either party.¹⁵ Termination takes place only on the first or on the fifteenth day of the applicable month.

A commercial lease is not terminated by the death of the landlord or the tenant; rather it is transferred to the heirs.¹⁶

No right of renewal

The tenant has no statutory right of renewal.

No pre-emption right of a tenant

Croatian law does not grant tenants a pre-emption right over commercial real property.

Rent and rent caps

Generally, the rent is agreed and provided for in the lease agreement. The absence of express indication does not render the lease null and void. Croatian law does not provide for any rent caps for commercial leases.

Rent review

Croatian law does not provide for any rent indexation of commercial leases. Therefore, rent is adjusted in accordance with contractual provisions agreed between the landlord and the tenant.

¹³ Lease and Sale of Business Premises Act 1996 (as amended) (Official Gazette, n° 91/96, 124/97 and 174/04) and Obligation Act 2005.

¹⁴ Article 4 of the Lease and Sale of Business Premises Act 2004.

¹⁵ Article 25 of the Lease and Sale of Business Premises Act 2004.

¹⁶ Articles 32 and 33 of the Lease and Sale of Business Premises Act 2004.

Costs rechargeable to tenants

In general, all costs are rechargeable to the tenant of a commercial lease.

Improvements

After termination of a commercial lease, the tenant must return the real property to their initial conditions, unless otherwise agreed by the landlord and the tenant.

If a tenant has carried out improvements, the landlord is entitled at the end of the lease to either keep the improvements in consideration for a payment equal to their value as at the end of the lease; or require the tenant, at his expense, to restore the real property to its original condition.¹⁷

Transfer of real property by the landlord

The law does not provide for any termination rights for the tenant in case of the sale of the building by the landlord or in case of change of control in the shareholders of the landlord.

Transfer of lease by the tenant

Any transfer without the prior consent of the landlord is usually not permitted.

Sublease

Subletting is usually not permitted without the prior consent of the landlord.¹⁸

Maintenance

During the term, the landlord must maintain the building and essential equipment (central heating, gas and water pipes, elevator etc.). The tenant is responsible for minor maintenance and renovation.

Permitted use

The nature of the business to be exercised in the premises is generally indicated in the lease. The absence of the nature of business provisions does not render the lease agreement null and void. If such provisions exist the disrespect of these by the tenant may lead to the termination of the lease by the landlord.

TAX**Transaction costs**

Sale of land and buildings

VAT

VAT at the rate of 22% is only applicable to newly constructed buildings when the vendor is a VAT tax payer who has previously deducted the output VAT.¹⁹ VAT is not applicable to sales of land. The rent of residential premises is exempted from VAT.

¹⁷ Article 356 of the Obligations Act 2005.

¹⁸ Article 20 of the Lease and Sale of Business Premises Act 2004.

¹⁹ Article 2 of the VAT Act 1995 (Official gazette n° 47/95).

Stamp duty

There is no stamp duty for transfer of real property in Croatia.

Transfer tax on real property

A 5% transfer tax is levied on the market value as determined by the tax authorities of the transferred real property. Generally, this tax is paid by the purchaser, but the parties may agree that it is paid by the vendor.

The first acquisition of residential real property by Croatian citizens is exempted from transfer tax. The acquisition of the land in order to construct a residential building is also exempted from transfer tax.

Special tax on income resulting from real property trader's activity

Under Croatian law, a real property trader is an individual who transfers three or more real property of the same type within a five year period. Real properties of the same type are real properties with the same characteristics and which are intended for the same use. The special tax on income is progressive from 15% to 45% depending on the real property trader's income.

Taxation of capital gains

Capital gains realised by a private individual

Capital gains from the sale of real property and property rights are subject to a final withholding²⁰ tax rate of 25%. The tax is assessed on the difference between the sale price and its acquisition price. Costs incurred related to the sale are deductible. The tax authority may adjust the sale price if it is lower than the market value.

There are two exemptions from the 25% withholding tax²¹:

- if the real property is used as the principal residence of the vendor;
- if the real property is owned by the vendor for at least three years prior to the sale.

Capital gains realised by a corporate entity

The corporate profit resulting from the sale of real property is subject to income tax at a rate of 20%. Croatian corporate income tax law permits a 5% per year depreciation rate for buildings. Land cannot be depreciated.

Leases

VAT

In general, the lease of real property is subject to VAT at the rate of 22%. However, the lease of residential property is exempted from VAT.²²

²⁰ The amount corresponding to the capital gains tax due by the vendor is withheld by the purchaser from the purchase price and paid to the Treasury.

²¹ Article 50 of the Personal Income Tax Act 2004(as amended).

²² Article 11 of the VAT Act 1995.

Personal income tax

The rental income from the lease of real property is subject to a final 15% withholding tax.

Corporate income tax

The corporate profit from rental income is subject to corporate income tax at a rate of 20%. An annual 5% depreciation rate is applicable to buildings, while land cannot be depreciated. Depreciation of buildings is deductible for income tax purposes from rental income.²³

Real property taxes

The following real estate taxes are levied in Croatia:

- a 5 to 15 HRK per m² tax is levied on individuals and legal entities owning commercial real property that is unused for more than one year;
- a 1 to 5 HRK per m² tax is levied on individuals and entities owning undeveloped building land;
- up to 1,000 HRK per hectare tax is levied on individuals and legal entities owning or leasing agricultural land that is uncultivated for more than one year;
- the tax on the use of state owned land, levied on individuals and legal entities using such land;
- the tax on country cottages, levied on individuals and legal entities owning country cottages.

The actual rate of taxes on use of state owned land and country cottages are determined by the municipality or town where the real property is located.

LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS

Notary fees

A sale and purchase agreement concerning real property must be signed before a notary public. A foreign purchaser must sign in the presence of an official court translator. The notary public's fees are very low since the notary public only certifies the signatures. The translator's fees are usually in the order of EUR100 to EUR150. Under Croatian law the sale and purchase agreement of shares must be notarised.

Lawyers

Generally, lawyers perform a legal due diligence and prepare the sale purchase agreement. Usually, the lawyer's fees for drafting a sale purchase agreement depend on the value of real estate. International law firms' fees are usually calculated on the basis of hourly rates.

Land registry

Land registry fees are not significant.

Publication

There is no specific obligation to publish the transfer of real property.

²³ Article 6 of the Corporate Income Tax Act 2004 (as amended).

SECURITY USED IN REAL PROPERTY FINANCING

Mortgage

Croatian law recognises the mortgage as the only form of security over real property capable of registration in the land registry. Mortgages are established on their registration in the land registry.

The following kinds of mortgages are capable of registration:

- a mortgage agreement (most commonly used);
- a mortgage derived from a judicial settlement;
- a mortgage derived from decision of a notary public on the basis on the relevant document (unpaid invoices etc.);
- a mortgage derived from a court decision;
- a mortgage derived from a law.

A mortgage agreement must be signed by the parties before a notary public. The agreement must include the amount of the debt and the real property's registration number in the land registry. If there is a default, the creditor is allowed on the basis of this agreement to petition the competent court to execute the judicial sale of the encumbered real property.

A creditor may request from a notary public an authorisation to create a mortgage on the basis of the relevant documents (e.g. unpaid invoices). If such authorization is granted, the debtor is allowed to make an objection against such decision within 8 days. If the debtor objects the notary public transfers the file to the competent court to determine the reality of the debt.

If the facts show that the debt recovery may be put in danger by the debtor's creditworthiness (i.e. he organises his insolvency), the creditor is entitled to petition the court to create a temporary mortgage until the end of the proceedings. Should the debt be confirmed, a judicial sale of the debtor's encumbered property would be organised by the competent court.

Other common security

The mortgage is currently the only form of security commonly used in real estate financing in Croatia. Some other forms of security are infrequently used in real property financings, such as share pledges, cash pledges and the fiduciary transfer of property.



About the Law Firm

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.

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