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Real Property Investment Law in Slovakia



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TITLE**Full ownership***General*

Full ownership of property is recognised under Slovak law. Ownership rights benefit from constitutional protection.¹

Acquisition

Any agreement relating to the transfer of real property must be concluded in writing.² Real property ownership rights are acquired upon registration in the cadastre, which enter into force retroactively, as of the date of the registration application. The cadastre delivers ownership certificate excerpts. These excerpts constitute ownership titles. An owner's title to real property may be verified by checking the ownership certificate excerpt, which is a public document.

Limitations on acquisition

Since the entry of Slovakia in the European Union, 1st May 2004, any person or legal entity from another EU member state may freely acquire real property in Slovakia, even though they are not resident in Slovakia or are not established in this country.

However the freedom to acquire agricultural land and forests by non residents is limited³ for a transitional period of seven years from the date of accession⁴, that is until 1st May 2011.

Protection of ownership by courts

There are no particular issues to raise. However, as real property in the Slovak Republic is still undergoing a process of privatisation, it is advisable to check whether any particular real property is not under a claim for privatisation before entering into negotiations for its acquisition.

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION

Several interests (encumbrances) are subject to registration in land register. Mortgages, assignment of a right of ownership to an asset, easements and pre-emptive rights must be, in most cases, registered by the land register in order to be effective. An easement can be created by contract, by will, by agreement of heirs, by decision of a state authority, by law or by way of uninterrupted bona fide possession for a certain period of time.

If an easement is created by contract, the encumbrance is perfected only after it has been registered in the land register. When an easement is created by a decision of state authority, it is effective since the effectiveness of such decision and it need not be registered in the land register.

¹ Article 20 of the Constitution.

² Article 46 of the Slovak Civil Code.

³ Foreign Exchange Act 1995 (Act No. 202/1995 Coll.) and Ownership of Land and Agricultural Property Act (Act No. 229/1991 Coll.).

⁴ Annex XIV to the Act Concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the Adjustments to the Treaties on which the European Union is Founded).

An easement may be created either for the benefit of a specific person (such easement is non-transferable) or for the benefit of another piece of real property, in which case the easement exists without regard to who owns the benefiting real property.

Only pre-emptive rights which have effects *in rem* must be registered. Such pre-emptive rights are perfected upon constitutive registration. On the contrary pre-emption rights for state authorities based on statutes such as the Act on Protection of Cultural Monuments are effective by operation of law are not subject to constitutive registration.

The purchaser acting in good faith which acquires the land encumbered with an interest has the same obligations towards the beneficiary of the interest as the initial owner. Therefore, the acquisition of land or buildings requires a careful examination for the existence of interests.

DEVELOPMENT OF LAND

Two separate permits are required in order to start the construction of building: a planning permit and a construction permit. For certain type of buildings, such as family homes, the Building Act No. 50/1976 allows the combining these two permits into one administrative act.

Planning permit – decision on location of construction

A planning permit is a decision by which state construction authorities express their consent with the location of a new building. The future building must comply with overall land planning documents. A written application for the planning permit is filed with the relevant construction office. The application comprises the data on compliance of the application with the above mentioned land planning documentation, urban incorporation of the proposed construction and the assessment of its environmental effects.

Decision on location of a construction is valid for two years; however it does not lose its validity if during this period an application for a construction permit is filed.

Construction permit

A construction permit is the resolution of a competent construction office (municipal authority) authorising a constructor with construction of a building which has been approved by the planning permit.

Written application for construction permit must contain sufficient documentation for analysis of the proposed construction and conform to the planning permit. During the approval process several statements are required and issued, such as: statement of fire protection inspection; statement of distributors of water, gas, electricity, sewage; statement of neighbours and others. The time limit for the decision in a simple case is 30 days. This initial time limit for a complicated construction may be extended to 60 days. A relatively small fee is charged for the construction permit. If the application is incomplete or irregular, the construction authority will ask the application to be completed within a given time limit. In case of negative decision, an appeal must be filed within 15 days after the delivery of such decision.

The construction permit authorises the construction and sets binding conditions for the construction. Construction works may commence within the days of effectiveness of the construction permit. If construction has not started within two years following the issuance of the permit, it will expire unless extended by the construction authority.

Occupancy permit

A construction built in accordance with terms set by the construction permit may be operated and occupied only upon the approval of operation of the building – the occupancy permit. The same construction authority which issued the construction permit is entitled to approve such occupancy permit. On-site inspection is necessary and will determine the compliance of the construction with the construction permit and other applicable regulation is examined.

LEASES

Leases are governed by general provisions of the Slovak Civil Code.⁵ Specific provisions apply to leases of non-residential premises, flats, as well as forestry and agricultural land.

Financial leases

Financial leases in the Slovak Republic are not governed by any specific law, though they must comply with general rules of the Civil Code and Commercial Code applicable to leases. Besides, Slovak taxation law provides for a specific regime of taxation of financial leases.

COMMERCIAL LEASES**Specific statute**

Commercial leases are governed by a specific statute, the Commercial Leases Act⁶ as well as by the provisions of the Slovak Civil Code.

Commercial classification

Premises may only be rented as commercial premises if they have been classified as such by a decision (in Slovak "kolaudačné rozhodnutie")⁷ of the local building control office. Further, only the activities stated in the decision of the building control office may be exercised on the premises. It is therefore important to check the authorised activities for the premises before concluding the lease.

Form

A lease agreement must be concluded in writing and must contain the following mandatory stipulations, failing which it is invalid:

- precise definition of the parties and the relevant premises;
- subject matter of the lease and its purpose;
- amount of the rent and the method of calculation;
- duration of the lease (definite or indefinite period).⁸

All other provisions may be freely determined by the parties.

⁵ Articles 663 and following of the Slovak Civil Code.

⁶ Act No. 116/1990 Coll.

⁷ The classification decision is an administrative decision authorising the use of the building or the premises for a specific purpose.

⁸ Article 3 of the Commercial Leases Act.

Duration

A commercial lease may be concluded for a definite or an indefinite period of time. There is no maximum duration for definite commercial leases.

Termination*Indefinite term*

Unless otherwise stated in the lease agreement, a commercial lease for an indefinite period may be terminated without any particular grounds by either party upon a three months notice. The notice period runs from the first day of the month that follows its delivery.

Definite term

A lease agreement signed for a definite term terminates upon expiry of the agreed term. It may also be terminated before the end of the term with a three months notice solely for the grounds provided by the Commercial Leases Act.

The main grounds are as follows:

Grounds available to the landlord

- use of the premises by the tenant in violation of contractual provisions;
- payment default for rent or for service charges for more than one month;
- serious disturbance of peace and good order by the tenant despite a written notification;
- sublease of the premises without the landlord's approval;
- modification of the tenant's activity in the premises without prior notification to the landlord.

Grounds available to the tenant

- loss of the qualification which entitled him to carry out the activity for which he leased the non-residential premises;
- the premises become unfit for the agreed purpose through no fault of the tenant;
- the landlord grossly breaches his duty to keep the premises in a good condition.

Right of renewal

If the tenant continues to use the leased premises after the end of the term and the landlord fails to file a court summons for the premises to be handed over within 30 days, the lease agreement is renewed on the same terms:

- for a one-year term if the lease was initially concluded for one year or longer;
- for the initial term if the lease was initially concluded for less than one year.⁹

⁹ Article 676 of the Slovak Civil Code.

No pre-emption right of tenant

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

Rent and rent cap

The amount of the rent is freely determined by the parties. Slovak law does not set any rent caps.

Rent review

The parties may provide for indexation clauses. The Consumer Price Index (in Slovak "*Index spotrebitel'ských cien*") published by the Slovak Statistical Office is often used for this purpose. However, any other Slovak or foreign index may be used. The index need not be linked with the subject matter of the agreement or the parties' business sector.

Costs are rechargeable to tenants

As a rule, all costs paid by the landlord are rechargeable to the tenant (including costs of repairs, real property tax, etc.).

However, as far as services charges are concerned (electricity, water and gas), the landlord may not recharge to the tenant a higher amount than the sum actually paid by the landlord to the providers of the services.

Improvements

Unless agreed otherwise, the tenant must hand over the premises in the condition in which he took them over, allowing for usual wear and tear.¹⁰

The tenant may carry out improvements and alterations to the leased premises with the landlord's consent.¹¹ The tenant may obtain the reimbursement of costs related to improvements from the landlord only by agreement. If the landlord gave his consent to the improvements but did not undertake to reimburse the costs, the tenant may obtain compensation for the increase of value of the premises at the end of the lease. The amount of this increase of value is determined by the parties or according to expert assessment.

Transfer of the lease

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

Sublease

A tenant may only sublease non-residential premises or their part for a definite period, in writing and with the landlord's consent¹². The rights and duties of the tenant also apply to the subtenant.

¹⁰ Article 13 of the Commercial Leases Act.

¹¹ Article 667 of the Slovak Civil Code.

¹² Article 6 of the Commercial Leases Act.

TAX

Transaction costs

Sale of land and buildings

VAT¹³

The transfer of land is VAT exempt, except for a land for which a valid building permit has been obtained.

The transfer of buildings or a part thereof is subject to VAT, if such transfer occurs within five years from the classification decision of the building. The VAT rate is 19%. A transfer performed after this period is VAT exempt. However, the tax payer may decide not to have the transfer exonerated from VAT.

Transfer tax

Transfer tax was abolished for 1st January 2005. Therefore, the sale of real property is not subject to transfer tax.

Taxation of capital gains realised by a corporate entity¹⁴

Capital gains arising from the sale of land and buildings are taxed at the general tax rate of 19%. Capital losses arising from the sale of land are not tax deductible.

Leases

VAT

As a rule, lease of real property is VAT exempt, except for lease of accommodation facilities (i.e. hotels, motels, hostels etc.) and lease of parking places. A VAT payer who leases real property from another VAT payer is legally authorised to decide that the lease of real property will not be exempt from VAT.

Corporate income tax

The amount of rent constitutes revenue for the landlord and is tax deductible for the tenant. A special regime applies to improvements made by the tenant.

Financial lease

VAT

Financial leases of real property are VAT exempt, with the exception of financial lease agreements related to accommodation facilities, parking sites, permanently installed equipment and machinery, and safes.

¹³ Value Added Tax Act 2004 (Act No. 222/2004 Coll.).

¹⁴ Income Taxes Act 2003 (Act No. 595/2003 Coll.).

Corporate income tax

The financial lease is defined by the Income Taxes Act. The following conditions have to be fulfilled:

- the lease period runs for at least 60% of the statutory depreciation period stipulated for the particular type of asset;
- the minimum lease period is three years.

The amount of leasing fees constitutes revenue for the landlord and is taxed at the general tax rate of 19%.

A tenant can depreciate a tangible fixed asset held under a financial lease (except for land). The depreciation period is the same as the leasing period, depreciation charges are applied in equal amounts on a monthly basis.

Land revenue tax

There is no land revenue tax applicable in Slovakia.

Real property tax¹⁵

Real property tax is due by the registered owner of the real property (or by the user if ownership is in doubt). The basis and rates of taxation are different for lands, buildings and flats.

Land

The basis of the tax is the official price of land determined as a multiple of the surface of the land and the average price per square meter of the land, as laid down by law.¹⁶

The basic tax rate is 0.25% of the tax base. However, this rate may be modified by the tax administrator and different rates can apply to different types of land, within certain limits.

Buildings

The basis of the tax is the area occupied by the entirely constructed building on the ground, in square meters.

The basic taxation rate is 1 SKK per square meter, and may be increased by the tax administrator according to the number of floors. The tax administrator may also increase or reduce the tax rate according to local conditions.

Flats

The basic annual tax rate is 1 SKK per square meter of floor area of the flat. The tax rate can be changed by the tax administrator issuing a general binding regulation.

¹⁵ Act No. 582/2004 Coll. on Local Taxes.

¹⁶ Annexes of Act No. 582/2004 Coll. on Local Taxes and Act No. 492/2004 Coll. on the Determination of General Value of Assets.

Payment of the tax

A real property tax return must be filed at the latest on 31st January of each year. The tax administrator will issue the tax assessment by 15th May of that year. The tax is due by 31st May of that year. The tax administrator may allow the tax to be paid in instalments.

Others

Not applicable.

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

As a rule, the intervention of a notary public is not compulsory in a transaction applicable to real property, except in some specific cases. When a notary public intervenes, the maximum rates of notary fees are proportional to the value of the relevant transaction and vary between 1 per cent and 0.05% of the amount of the transaction.¹⁷

Lawyers

There are no statutory restrictions on lawyer's fees.

Land registry

The charge for entry into the cadastre is SKK 2,000 (approximately EUR 50) per standard application and SKK 8,000 (approximately EUR 200) per application for a fast registration within 15 days.¹⁸

Publication

There are no statutory publication requirements.

SECURITY USED IN REAL PROPERTY FINANCINGS

Foreign legal entities are no longer restricted from taking security over real property. The most commonly used securities in real property financing are mortgages, rights of retention, security assignment and guarantees.

Mortgages¹⁹

A mortgage is created on the basis of a written agreement, an agreement upon an inheritance settlement, on the basis of a court or administrative authority's ruling or by operation of law.²⁰

¹⁷ Notary Costs Act 1993 (Act No. 31/1993 Coll.).

¹⁸ Administrative Expenses Act 1995 (Act No. 145/1995 Coll.).

¹⁹ Articles 151a and following of the Slovak Civil Code.

²⁰ For example in case of joint ownership, according to Article 15 of the Ownership of Flats and Non-residential Premises Act 1993 (Act No. 182/1993 Coll.).

Mortgage on real property, flats or non-residential premises are created upon entry in the cadastre, unless a special law provides otherwise²¹ (e.g. a mortgage created on the basis of a ruling of a court or administrative authority arises as of the day when the ruling enters into force).

The date and time of the registration into the cadastre determine the ranking of the mortgage, which cannot be altered by agreement.

Upon application of the creditor, a specific real property encumbered by a mortgage may be realised either as agreed in the mortgage agreement (e.g. a private sale by a secured creditor), by judicial sale of the real property. Judicial sale is usually carried out by a bailiff or through a public auction.

Right of retention²²

This right concerns only movable assets and is especially provided to secure the payment of the rent by the tenant to the landlord. Indeed, the landlord may retain all the assets situated in the leased premises to secure this payment.

Security assignment: assignment of a right of ownership to an asset²³

The debtor transfers legal title to an asset to the creditor who maintains it until the debtor discharges in full its debts. After the debtor fulfils its obligations, the legal title is re-transferred to the debtor.

An agreement for the assignment of a right of ownership must be in writing. In case of default, the creditor is the legal owner of the asset. There are no particular costs or registration requirements.

Guarantees

Guarantees are ruled by the Slovak Civil Code²⁴, while specific provisions of the Slovak Commercial Code apply to bank guarantees.²⁵



²¹ Article 151e of the Slovak Civil Code.

²² Articles 151s and following of the Slovak Civil Code.

²³ Article 553 of the Slovak Civil Code.

²⁴ Articles 546 and following of the Slovak Civil Code.

²⁵ Articles 313 and following of the Slovak Commercial Code.

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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