



Fall | 20



# INTERNATIONAL LAWYERS NETWORK



**TGS BALTIC**

**Buying and Selling Real Estate in Latvia**

**ILN REAL ESTATE GROUP**

This guide offers an overview of legal aspects of buying and selling real estate in the requisite jurisdictions. It is meant as an introduction to these marketplaces and does not offer specific legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship, or its equivalent in the requisite jurisdiction.

Neither the International Lawyers Network or its employees, nor any of the contributing law firms or their partners or employees accepts any liability for anything contained in this guide or to any reader who relies on its content. Before concrete actions or decisions are taken, the reader should seek specific legal advice. The contributing member firms of the International Lawyers Network can advise in relation to questions regarding this guide in their respective jurisdictions and look forward to assisting. Please do not, however, share any confidential information with a member firm without first contacting that firm.

This guide describes the law in force in the requisite jurisdictions at the dates of preparation. This may be some time ago and the reader should bear in mind that statutes, regulations, and rules are subject to change. No duty to update information is assumed by the ILN, its member firms, or the authors of this guide.

The information in this guide may be considered legal advertising.

Each contributing law firm is the owner of the copyright in its contribution. All rights reserved.

## KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER LATVIAN LAW

### 1. *Types of real estate*

#### 1.1. Land estate

Consists of one or several land plots.

#### 1.2. Land and building estate

Consists of one or several land plots and one or several buildings or structures located on the land plot (plots).

#### 1.3. Building estate

Consists of one or several buildings or structures.

In case of a building estate, the land plot, on which the respective buildings or structures are located, is owned by another person, and does not belong to the owner of the building estate (*please see Section 3*).

#### 1.4. Residential estate

Consists of:

- an individual property (apartment, non-residential premises, or artist's workshop in a residential house) in a residential building; and
- the relevant undivided share of the joint property (external enclosing structures, internal load bearing constructions and intermediate coverings of the residential house, premises for common use, engineering communication systems, devices servicing the residential building and other indivisible elements functionally associated with the exploitation of the residential building, as well as the auxiliary buildings and structures belonging to the residential building). The joint property also

includes the land plot, on which the respective residential building is located, unless it is owned by another person (*please see Section 3*).

### 2. *Undivided share of the real estate*

It is possible to acquire not the entire real estate, but an undivided share of the real estate, i.e. to acquire the undivided share of the joint property (*Note: do not mix up with the joint property included in the composition of the residential estate*). The joint property is the undivided real estate owned by several persons – joint owners of undivided shares so that only the substance of the rights is divided.

A joint owner owns the undivided share of the joint property; therefore, the joint owner is entitled to deal with the undivided share, including alienating or pledging the respective undivided share.

However, to deal with the joint property itself, either in its entirety or with respect to a part of it, the consent of all the joint owners shall be obtained. The joint owners can agree on divided use of the joint property proportionally to the amount of the undivided shares by signing a respective agreement.

### 3. *Divided estate*

The general principle provided by Latvian law is that buildings and structures located on the land plot are part of the land plot and therefore owned by the land owner, and only in exceptional cases, buildings and structures as separate building property could be owned by another person, who is not the owner of the land plot – the so-called divided estate.

In case of the divided estate, namely, if the building (structure) is located on the land plot, which does not belong to the owner of the building (structure), but is owned by another person, the status of such building (structure) and therefore the legal consequences, which depending on the status of the building (structure) may vary, should be evaluated.

There are two forms of divided estates, depending on the status of the building (structure) on the land plot:

*First form.* Compulsory divided estate

Generally, a building (structure) built during the Soviet time and until September 1, 1992, when the Civil Law of the Republic of Latvia entered into force.

The divided property was formed when the ownership rights of the land plot under the building (structure) were renewed to the previous owners or their heirs during the land reform, or the land belonging to the state or local government, or building (structure) was acquired by privatizing the state or municipal undertakings or separate real estate objects.

The owner of the building (structure) is entitled to use the part of the land plot functionally related to the building on the grounds of the so-called compulsory lease. In case of a compulsory lease, the parties should agree on the size of the leased area of the land and on the amount of lease payment, and, if the parties cannot agree on the mentioned, the dispute shall be resolved by the court. The usual practice is to establish a lease payment of approximately 6% of the cadastral value of the leased part of the land plot per year.

*Second form.* Voluntarily established divided estate.

Buildings built after September 1, 1992, when the Civil Law of the Republic of Latvia entered into force, based on a specific long term (at least 10 years) lease agreement providing the rights to the lessee to build buildings on the leased land plot as separate real estate objects.

The separate ownership of the building (structure) is established only during the validity of the lease agreement.

Amendments to the Civil Law entered into force on January 1, 2017, by introducing a new institute of build-up rights, which henceforward replaces the institute of specific long-term lease for the voluntary established divided estate.

The build-up rights are rights *in-rem*, established based on the agreement entitling, during the validity of such rights, to build and use non-residential buildings or engineering structures on the land plot owned by another person. The building (structure) built based on the build-up rights is an integral part of the build-up rights. It is not permitted to build residential buildings based on the build-up rights.

The validity of the build-up rights cannot be less than 10 years, and the build-up rights shall be registered with the Land Registry.

The build-up rights can be alienated and encumbered with rights *in-rem*, unless explicitly prohibited in the agreement on granting of the build-up rights.

After expiry of the build-up rights, the building (structure) built based on the

build-up rights becomes an integral part of the land plot, i.e., becomes the property of the land plot owner. The owner of the land plot acquires the building (structure) without remuneration, unless such remuneration has been provided in the agreement on granting of the build-up rights. In the agreement on granting of the build-up rights the parties may provide that, prior to the expiry of the build-up rights, the holder of the build-up rights shall vacate the land plot from the constructed buildings (structures).

#### **4. Restrictions for acquisition of land in Latvia**

There are certain provisions and legal restrictions for acquisition of real estate in Latvia; however, these restrictions are imposed only regarding ownership of the land, there are no restrictions regarding ownership of other types of real estate such as buildings, structures, apartments, business premises etc.

Restrictions for acquisition of land vary depending on whether the land is located in the city or in rural areas.

##### 4.1. In cities land may be acquired by:

- 1) the citizens of Latvia and any European Union (EU) member state;
- 2) the State and local government, and state and municipal companies;
- 3) a capital company (a limited liability company or a joint stock company) registered in Latvia or any EU member state, if more than a half of the share capital of the company belongs to:

- a) the citizens of Latvia and EU member state; or
- b) the State and local government, and state and municipal companies; or
- c) private individuals or legal entities from the countries, which have concluded an agreement with the Republic of Latvia for the Encouragement and Reciprocal Protection of Investment and such agreement has been approved by the Parliament of Latvia prior to 31 December 1996 (*such countries are: the United States of America, Austria, Belgium, Luxemburg, Czech Republic, Denmark, France, Greece, Estonia, Israel, South Korea, United Kingdom, Lithuania, the Netherlands, Norway, Poland, Portugal, Finland, Spain, Switzerland, Uzbekistan, Germany, Vietnam, Sweden*); or
- d) private individuals or legal entities from the countries, which have concluded an agreement with the Republic of Latvia for the Encouragement and Reciprocal Protection of Investment after 31 December 1996, and the respective concluded agreement prescribes the rights of the private individuals and legal entities from Latvia to acquire land in the respective country (*countries, which have concluded agreements for the Encouragement and Reciprocal*

*Protection of Investment after 31 December 1996 are - Armenia, Azerbaijan, Belarus, Bulgaria, Egypt, Georgia, Croatia, India, Iceland, Canada, Kazakhstan, China, Kirgizstan, Kuwait, Moldova, Rumania, Singapore, Slovakia, Turkey, Ukraine, Hungary, but regarding these countries the exact provisions of the agreements should be reviewed);*

- 4) a public joint stock company registered in Latvia or any EU member state, if its shares are quoted in stock exchange;
- 5) religious organizations, which were registered in Latvia before 21 July 1940;
- 6) the state or municipal institutions of higher education.

Other private individuals and companies that do not correspond to the aforementioned conditions may acquire the land in Latvia with the permission from the local government; however, it is also prohibited for such private individuals and companies to acquire the following types of land: land in the border zone;

- land in the protection zone of coastal dunes of the Baltic Sea and the Gulf of Riga and land in the protection zones of public bodies of water and water courses, except if the build-up is allowed on the land in accordance with the spatial plan of the city;

- agricultural and forest land in accordance with the spatial plan of the city.

4.2. In rural areas land may be acquired by:

- 1) the citizens of Latvia, citizens of the EU member states or European Economic Area (EEA) states or Switzerland;
- 2) the Republic of Latvia or derived public persons (such as municipal or other public person established based on law);
- 3) a capital company (a limited liability company or a joint stock company) registered in Latvia, EU, EEA country or Switzerland, if the respective company has been registered in Latvia as a taxpayer and if all the shareholders of the company are:
  - a) citizens of Latvia, citizens of the EU member states or EEA country, or Switzerland; or
  - b) the Republic of Latvia or derived public persons; or
  - c) private individuals or legal entities from the countries, which have concluded an agreement with the Republic of Latvia for the Encouragement and Reciprocal Protection of Investment and such agreement has been approved by the Parliament of Latvia prior to 31 December 1996; or
  - d) private individuals or legal entities from the countries, which have concluded an agreement with the Republic of

- Latvia for the Encouragement and Reciprocal Protection of Investment after 31 December 1996, and the respective concluded agreement prescribes the rights of the private individuals and legal entities from Latvia to acquire land in the respective country;
- 4) legal subjects registered in Latvia, EU, EEA country or Switzerland, if the respective legal subject has been registered in Latvia as a tax payer or as a commercial activity performer and if the legal subject is:
    - a) an individual merchant owned by a citizen of Latvia, citizen of the EU member state or EEA country, or Switzerland;
    - b) an individual undertaking registered by a citizen of Latvia, citizen of the EU member state or EEA country, or Switzerland;
    - c) a co-operative society, if all the members of the society are legal subjects mentioned in clause 1), 2), 3) or sub-clause a), b), d) of clause 4);
    - d) other legal subject registered in the EU member state, EEA country or Switzerland, which can be compared to the above individual merchant, individual undertaking, or co-operative society;
  - 5) religious organisations registered in Latvia, the activity whereof is at least 3 years;

- 6) associations and foundations registered in Latvia, the activity whereof is at least 3 years and the purpose of activity whereof is related to the environmental protection, production of agricultural cultivated plants or products, or hunting management or maintenance, if the land is acquired to ensure the mentioned purpose of activity.

Other private individuals and companies that do not correspond to the abovementioned conditions may acquire the land in Latvia with the permission from the local government; however, it is also prohibited for such private individuals and companies to acquire the following types of land:

- land in the border zone;
- land in nature reserves and other protected nature areas in zones of nature reserves;
- land in the protection zone of coastal dunes of the Baltic Sea and the Gulf of Riga;
- land in the protection zones of public bodies of water and water courses;
- agricultural and forest land;
- land in the mineral deposits of national significance.

If, due to the changes, the status of the legal subject does not correspond to the aforementioned conditions, in order to keep the land in the cities or rural areas, the permission from the local government should be received within a period of one month, and if the permission is not granted the land

should be alienated within a period of two years.

If a private individual or a company, which has acquired land in the cities or rural areas with the permission of the local government, does not use the land for the prescribed purpose the land should also be alienated within a period of two years.

### **5. Agricultural land**

The additional limitations are set on the acquisition of agricultural land in rural areas of Latvia. Legal entities are entitled to acquire 5 ha of agricultural land in aggregate without additional limitations, but private individuals are entitled to acquire 10 ha of agricultural land in aggregate without additional limitations.

In order to acquire more agricultural land, private individuals and legal entities should confirm that the acquired land will be used for agricultural activities, and the respective private individuals and legal entities shall comply with the specific criteria prescribed by law, including: clear information on the true beneficiaries and statement that the amount of the possible tax debt does not exceed EUR 150. In addition, the citizens of the European Union Member States, the Member States of the European Economic Area or the Swiss Confederation, if they wish to acquire the agricultural land as private individuals, or if they are sole shareholders or shareholders jointly representing more than a half of the share capital of the company intending to acquire the agricultural land, or persons entitled to represent the respective company, shall receive a registration certificate of the Union citizen and the document certifying knowledge of the official language (Latvian) at least at B level grade 2 (*namely, the person*

*is able to communicate on everyday subjects and professional issues, to clearly phrase and justify his or her opinion, reads and understands texts of different content, is able to write the documents necessary for work (for example, statements, summaries, minutes, reports, deeds), as well as expanded texts regarding everyday life and professional topics, comprehends, and understands naturally paced spoken texts on different topics).*

Upon the request of the local government, the person shall make a presentation in Latvian explaining the intended usage of the land in agricultural activity. If the agricultural land is to be acquired by a legal entity – the usage of the land in agricultural activity shall be presented by the individual – the sole shareholder or individual shareholder jointly representing more than one half of the share capital of the company (in case of beneficiaries – presentation shall be made by those beneficiaries).

For a person, who meets the criteria, to be able to acquire agricultural land, he or she shall first submit an application to the local government of the territory in which the relevant land is located, and after examination of the application and offering to exercise the rights of first refusal to the registered lessee, if any, of the agricultural land and to the Land Fund of Latvia, the commission of the local government shall decide on giving its consent or refusal to acquisition of the agricultural land.

In addition, one private individual or legal entity can acquire up to 2,000 ha of agricultural land. The local government has the right to determine the maximum area of agricultural land one private individual or legal entity can possess within their administrative area, but no more than 2,000



ha. Related parties can acquire up to 4,000 ha of agricultural land.

## 6. Rights of first refusal

The rights of first refusal are priority rights to purchase a real estate, if the owner sells the real estate.

### 6.1. Local government rights of first refusal

In case of alienation of the real estate, a local government shall have the rights of first refusal of the real estate, if the real estate is necessary for performance of local government functions.

The local government decision on exercising its rights of first refusal or on refusal to exercise its rights of first refusal is adopted within 20 (twenty) days after submission of the copy of the purchase agreement to the local government.

The local government rights of first refusal shall not apply to the following real estates:

- production objects with all their accessories;
- real estate, from which an undivided part has been alienated and which remains in the joint property of the seller and the purchaser;
- real estate that is being sold through voluntary or compulsory auction;
- real estate, to which third parties have the rights of first refusal or redemption rights based on the law, agreement or will.

### 6.2. Joint owners' rights of first refusal

If any of the joint owners of the real estate alienates its undivided share (*please see Section 2*) to a person, who is not a joint

owner, then the other joint owner(s) shall have the rights of first refusal. A joint owner is entitled to express the will to exercise its rights of first refusal within a 2 (two)-month period as from the receipt of the purchase agreement. But, if by the fault of the seller, the joint owner is not able to exercise the rights of first refusal, such joint owner will have the redemption rights, namely, within a period of 1 (one) year as from the registration of the acquirer's title to the real estate with the Land Registry, the joint owner will be entitled to claim for acquisition of the real estate, by taking precedence over the acquirer and by assumption of the rights of the acquirer.

### 6.3. Rights of first refusal in case of divided property

In case of divided property (*please see Section 3*), the owner of the land and the owner of building (structure) have mutual rights of first refusal and redemption rights, if the respective land or building estate is alienated. The rights of first refusal shall not apply, if the building (structure) is built based on the build-up rights.

### 6.4. Other rights of first refusal

Rights of first refusal can be established also by the agreement or will.

The law also provides for other specific cases when third parties have the rights of first refusal or redemption rights to real estate, for example, if the real estate is alienated in the territory of a civil aviation aerodrome of the state significance (also the territory necessary for further development thereof) and the civil aviation aerodrome is owned by a capital company where the state has a decisive

influence – the state has the rights of first refusal, but if the civil aviation aerodrome is owned by a capital company, where the local government has a decisive influence – the respective local government has the rights of first refusal, or rights of first refusal to the real estate in the territory of the port may be exercised by the local government, represented by the port authority, but the rights of first refusal to the real estate in the territory of the port of Riga shall be exercised by the port authority of Riga as a derived public person.

### **7. Real estate registries**

There are two registries related to real estate in Latvia: the Land Registry and the National Real Estate Cadastre Information System (Cadastral Registry).

The Land Registry is the main real estate registry and is kept by the respective Regional Court Land Registry Offices, each of them operating within a particular administrative territory. All rights (including ownership rights, all kinds of legal encumbrances, mortgages, restrictions, etc.) regarding real estate shall be registered with the Land Registry.

Ownership rights of real estate shall be registered with the Land Registry and only a person, whose ownership rights have been registered with the Land Registry, shall be considered the owner of real estate, except when the ownership rights of the real estate are established by the law.

Entries registered with the Land Registry have public credibility. Thus, not only the owner of the real estate is guaranteed credibility of its title registration, but also every third party is provided with valid information on the current status of the real

estate. However, this does not mean that transfer of title to real estate or the title itself cannot be challenged (for example, the seller has no rights to sell the respective real estate, or any third party's rights of first refusal have been violated and thus this person may possibly exercise his or her redemption rights).

The Cadastral Registry is kept by the State Land Service. The cadastral value (determined mainly for the real estate tax and Land Registry state duty purposes), detailed information on buildings and structures (area, number of premises, etc.) as well as detailed information on every real estate object, including graphical information and technical encumbrances, are held in this register.

However, not all encumbrances prescribed by law are actually registered in the registers, for example, protection zones and consequential restrictions and limitations are set by law, notwithstanding whether they are registered with the Land Registry and/or Cadastral Registry, therefore the actual situation on site shall be considered prior to the acquisition of the real estate.

In practice, frequently the information in the Cadastral Registry differs from the information in the Land Registry.

The law also specifies buildings and structures, which are not registered in the Land Registry as separate building property; for example, some transport structures, and such buildings and structures are registered in the Cadastral Registry.

Therefore, to obtain more detailed information on the real estate, the information in both registries – the Land Registry and the Cadastral Registry should be

reviewed and considered prior to the acquisition of the real estate.

#### **8. Permitted use of the real estate (zoning) and environmental protection regulations**

Prior to the acquisition of real estate, the permitted use of the real estate (zoning) and possible restrictions for the usage, including construction, of the real property should be additionally reviewed in the local government spatial plan and Territory Usage and Build up Regulations.

Prior to the acquisition of real estate, it should also be reviewed whether the territory of the real estate is not registered with the Register of Polluted and Potentially Polluted Areas. However, it should be noted that, even if the territory of the real estate has not been registered as polluted or potentially polluted, depending on the historical usage of the respective real estate there is a risk that historical pollution may appear.

#### **9. Agreement and re-registration of the title with the Land Registry**

Any transfer of the title of the real estate should be registered with the Land Registry. Agreement on alienating the real estate should be prepared in writing and signed by both parties personally. It should be also noted that an oral agreement is binding to the parties, and each party is entitled to claim from the other party to express the oral agreement in a written form.

It is not required, but signatures of the contracting parties on the agreement could be certified by a notary public, as well as an agreement could be concluded in the form of notary deed.

Recently there have been discussions on establishment of a requirement that all real estate transactions should be concluded in the form of a notary deed.

Agreement on alienation of real estate is binding upon the parties from the moment of its conclusion, but for any third party, only a person, whose ownership rights have been registered with the Land Registry, shall be considered as the owner of real estate.

The title (ownership) is transferred to the buyer from the moment of re-registration of the title with the Land Registry (i.e. a Land Registry judge has adopted a decision on registration of the buyer's title). This rule would be always applicable in relation to reliance of third parties on the owner of real estate; however, the contracting parties may agree otherwise on the moment of transfer of title.

To re-register the title with the Land Registry, the registration request to the Land Registry on the transfer of the title should be personally signed before a notary public chosen by the contracting parties.

The notary verifies the identity of both parties, and in case of legal entity also the rights to represent the legal entity. The persons signing the registration request need to provide proof of the identity – passport or ID card for private individuals and also a representative of the legal entity. If the contractual party is a legal entity not registered in Latvia an excerpt from the company register certifying registration of the company and the representation rights of the representative should be provided. Depending on the registration country of the legal entity, the excerpt from the company register should be certified by a notary public or by an authority of the company register of the respective country (for the EU

or the EEA countries, or Switzerland), or the excerpt should be legalized in accordance with the international regulatory enactments. The excerpt from the company register should also be translated in Latvian and translation should be certified by a notary public.

The notary fees are determined by secondary legislation, i.e. the Regulations of the Cabinet of Ministers.

For the re-registration of the title with the Land Registry, a state duty and a stamp duty should be paid prior to the submission of the registration request with the respective Land Registry Office.

The standard amount of the Land Registry state duty is 2% of the value of the real estate, i.e., of the cadastral value of the real estate or the transaction amount, whichever is higher; however, for some transactions the amount of the state duty may vary, for example, if a legal entity acquires a residential estate the state duty is 6% of the value of the real estate.

The ratio of 1.5 is applied to the state fee, if more than 6 months have passed as from the day of signing the respective agreement on alienation of the real estate.

Costs for the re-registration of the title with the Land Registry, including notary fees, are usually covered by the buyer, or equally divided between both the seller and the buyer; however, the seller usually bears the costs of deleting of the existing mortgage on the real estate, if any.

The seller should also pay the real estate tax for the entire year of the transaction, and no ownership will be transferred until the real estate tax is paid.

A registration request for the re-registration of the title with the Land Registry should be submitted with the respective Land Registry Office. The following documents should be enclosed with the registration request:

- an agreement on alienation of the real estate;
- a refusal to exercise the rights of first refusal (except the refusal of the joint owner or owner of divided property) (*please see Section 6*);
- a consent from third parties, if such is required in the particular situation, for example, a consent from the bank in case of a mortgage, or a consent from the spouse of the seller, if the real estate is the co-property of spouses;
- permission from the local government to acquire the land in Latvia, if such is required by the law (*please see Section 4*);
- documents certifying representation rights of the parties;
- receipts for the payment of the state and stamp duties