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Buying and Selling Real Estate in Slovakia

ILN REAL ESTATE GROUP



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KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER SLOVAKIAN LAW

I. Types of Real Property Conveyance¹ Transactions

- a) Purchase of an undeveloped plot of land
- b) Purchase of a developed plot of land
- c) Purchase of a building
- d) Purchase of a flat
- e) Purchase of non-residential premises
- f) Establishing a right to build²

Note:

A separate form of acquiring real property (indirectly) is a share deal – acquiring control over the entity (see below) owning the real property through purchase of shares in such entity.

Conveyance of title to real property may also take the form of a donation (see below) or exchange contract (basically a mirrored purchase contract).

II. Formal Requirements

A contract for the transfer of real property (purchase, donation) must be in writing and the expressions of will of the parties must be contained in the same document.

The signature of the transferor (on a paper-form contract) must be certified by a notary or a municipality's registry department.

Exceptions apply in cases where (i) the state, a state body, a municipality, etc. is a party to the contract, (ii) the conveyance agreement is drafted in the form of a notarial deed or (iii) the conveyance agreement is drafted by

¹ Please note that for the purposes hereof, we focus on conveyance of real properties based on a contract (in contrast to other types of real property transfer, such as inheritance or in auction).

² The right to build is a *right in rem* related to a plot of land consisting in a right to have an above-ground or underground structure whether yet existing or existing in future. It is not considered as real property *per se* under Slovak law.

an attorney-at-law (so-called "authorisation").

A transfer contract may also be concluded in electronic form – by means of guaranteed electronic signature. No signature certification is required in such case.

III. Contents

a. Mandatory Content

- The identification of the legal transaction at hand (purchase, donation, etc.), place and time of the legal transaction;
- Identification of the contracting parties;
- The purchase price;
- An exact description of the real property, i.e., a description of the
 - **land** – the details of the cadastral territory, the exact plot number, the land register "C" or "E", the type of land, and the area of the land;
 - **building** – the details of the conscription number and the plot number on which the building is erected;
 - **apartment or non-residential premises** – details of the number, floor number, entrance number and co-ownership shares in common parts and common facilities of the house and on the built-up and adjacent land, the conscription number and the plot number on which the building is erected;

Note: Under Slovak law, the land (*solum*) and the building (*superficies*) constitute two distinct objects of ownership.



Thus, the land and the building built upon it may be owned by different persons.

- Where the real property is jointly owned by several owners, the ownership title expressed as a fraction of the total (e.g., 1/2) must be stated;
- Specific required contents in respect to a contract for transfer of a flat, such as accession to the Agreement on management of blocks of flats.

b. Recommended Content

- Specific payment terms reflecting, e.g., loan, involvement of a bank, etc.;

Note: To ensure that the purchase price is transferred to the transferor, the parties mostly use a deposit of the purchase price at a notary, attorney-at-law or bank (escrow account). The parties thus conclude a separate escrow agreement with the bank, notary or attorney-at-law. According to the escrow agreement the bank/notary/attorney-at-law is obliged to transfer the purchase price upon the fulfilment of the condition precedent(s) for the release of the purchase price detailed in the escrow agreement. These usually include submission of an official extract from the land register evidencing the registration of the transferee in the land register as the owner of the transferred real property (and additional content, e.g., that the real property is free from any mortgage and/or easement).

- Handover procedure details;
- Liability for defects – from

extended liability (compared to statutory standard) to no liability (using an “as is” condition clause);

- Declarations, if necessary, regarding the required municipal decisions such as, for instance, the occupancy permit determining the purpose of the use of the real property;
- Detailed representations and warranties regarding the current ownership and substantial characteristics of the real property such as: access, connectivity to supplies (gas, electricity, etc.);
- Determination of the technical condition of the flat based on based on expert appraisal with specification of the repairs to be carried out within the next 12 months;

Note: Collateral provisions may be agreed in the conveyance agreement dealing with specific requirements of the parties, such as (i) reservation of the ownership right (e.g., until full payment of the purchase price), (ii) repurchase clause, (iii) pre-emption right, (iv) trial purchase. A detailed description of these institutes exceeds the scope of this overview however they could be useful in some cases. We will gladly provide more detailed information upon request.

IV. Legal Title & Due Diligence

Legal Title

The legal systems that have historically governed the ownership of real property in the territory of the Slovak Republic have resulted in a situation characterized by fractioned ownership of lands and legal uncertainty due to the fact that the same



lands can sometimes be concurrently recorded in different registers and even in the name of different owners.

The records of ownership recorded in the land registry do not represent definitive proof of ownership as these records are considered veracious until proven otherwise.

Thus, a review of the land register is of major importance where ownership status is concerned. In particular, in major transactions a detailed review of title records for the past 10 years is highly recommended.

Due Diligence

In addition, depending on the location and nature of the real property, the seller should conduct a detailed due diligence review focused on specific issues (as applicable):

- unrestricted right to transfer the real property, pre-emption rights, long-term lease of arable lands, existence of mortgage over the real property;
- specific historical forms of ownership, e.g., “Urbarium” and ramifications on the transaction or intended use;
- (non)existence of unresolved ownership restitution claims raised by entitled persons persecuted by the fascist/communist regimes;
- construction planning aspects/restrictions;

Note: Construction, alteration as well as a change in use or the demolition of a building in most cases requires a territorial and (building) permit issued by the local building authorities. The building project has to comply with the local (or zoning, as the case may be) development plans. Therefore, with regard to the prospective plans of construction, the development and land use should be reviewed very

carefully before the closing of the contract.

- environmental burdens and issues;
- access to utilities networks;
- public law limitations (civil defence structures, inundation area, etc.);
- sufficient access to the real property (e.g., public road connection).

V. Ownership Restrictions

In general, the ownership of arable land is, under current laws, reserved for the state or individuals or entities that are “local”. A transferee may only acquire arable land if it fulfils the condition of having permanent residence or a corporate seat in Slovakia ten years before concluding the purchase contract. This fact must be certified by the local District Office and presented in the land registry proceedings. Nonetheless, this restriction has just recently been found in contradiction to the constitution and made ineffective and shall most likely be abolished and replaced.

VI. Transfer of Ownership

The transfer of ownership to real property in each case requires initiating a procedure before the local District Office (land registry department) on the basis of paper documents and/or documents in electronic form.

The proceedings for the entry of the ownership right in the land registry are instituted by means of an application filed by any party; the deadline for a decision on entry is 30 days, in “accelerated” proceedings 15 days.

A frequent instrument used in the conveyance of real property in Slovakia is a “geometrical plan” which is a set of descriptive data and geodetic layouts used for outlining the new boundaries of separated lands or a corridor of a possible easement, etc.



Note: Since a recent amendment to Slovak law, any errors in writing, calculation or other obvious errors can be rectified only through an amendment to the agreement.

The ownership is transferred to the transferee upon a decision of the land registry department (as of the date of application for entry in the case of flats).

VII. Forms of Ownership

In general, all individuals and legal entities can invest into and own real property assets. It is irrelevant if the owners and purchasers are resident or non-resident or which country they come from. It is only crucial that they have legal capacity.

The most frequent forms of ownership are:

1. Sole ownership:

The owner is the only person with ownership right to the real property.

2. Co-ownership: More than one person owns an undivided share in the real property. Each co-owner is entitled to dispose over its share. In case of transfer, the other co-owners have pre-emptive right (save for transfers to close persons such as a child, etc.)

3. Joint ownership of spouses: Each of the spouses is entitled to a share of the joint property, but is not entitled to dispose of it independently, i.e., without the consent of the other joint owner (spouse).

Residential property is typically owned by individuals (90% of flats in Slovakia are in the ownership of individuals/inhabitants). Owners of commercial property are most frequently legal entities under either private or public law. The most commonly used legal forms are joint-stock companies (a.s.) and limited liability companies (s.r.o.). Also, forests and/or arable lands are, to a large extent, owned by the Catholic church.

VIII. Agents

The buyer or seller can both use the services of a real property agent. Currently there are several renowned firms on the market providing services for the intermediation of retail premises and industrial areas.

The agent commission is determined by agreement of the parties without specific limitations.

Caution is recommended when using local agents as the legal-technical quality of the documents used by them is generally not at a level ensuring clear distribution rights and obligations among the seller, buyer and the agent in case an issue should arise.

IX. Donations

Real property can be donated by means of a donation agreement. Please note that given the specific nature of the donation, the return of a gift can be demanded only if the beneficiary commits a gross violation of good morals against the donor or the members of their family.

X. Financing

The usual way of financing real property is a bank loan/mortgage for at least a part of the purchase price. A bank thus regularly insists on collateral.

Typically, a buyer has to pay a certain portion of the purchase price from its own sources (the use of such financial resources is usually a condition precedent to drawing the loan). For large development projects banks usually require establishing a mortgage over the real property, shares in the buyer-legal entity as well as a pledge over all kinds of possible claims the buyer is expected to possess in the future in connection with the real property such as rent, insurance payment, etc.

For special transactions, such as large individual properties or real property portfolios, a common alternative to a bank

loan is the use of capital market products, for instance, bonds, receivables or credit derivatives.

XI. Costs and Taxes

The costs associated with the registration of the transfer are typically borne by the buyer. However, the seller usually has to bear the costs of deleting of existing mortgages (e.g., securing the seller's debts) from the land register.

The real property tax is a local tax the amount of which is determined by the respective local municipality for different types of land and premises.

The real property tax is paid for a tax period of a calendar year in advance. The purchaser shall report the acquired real property within 31 January of the following calendar year. The tax is payable upon receipt of the decision of the local municipality containing the calculation of the tax (within 15 days of the decision becoming final).

The transfer of real property may also involve many other tax aspects, particularly when a VAT regime applies. We strongly advise that tax advisors are involved in order to ensure that these aspects are dealt with comprehensively.

XII. Acquisitions

Real property can be acquired by way of an asset or a share deal. In the case of a share deal, the legal entities used for these purposes are mostly organized as limited liability companies or joint stock companies.

1. Limited Liability Company – s.r.o.

The most widely used legal form owing to its high flexibility, low capital requirement and relatively few obligations.

a) Legal Entity

- A legal entity acts autonomously, represented by executive director(s);

- Independently subject to taxation;
- The particular rights and obligations of an s.r.o. exist autonomously from those of the shareholders and the executive directors;
- The company's statutory body is one or more executive directors. The executive directors act in all matters on behalf of the company in the way of acting that is registered in the Commercial Register. The Foundation Deed (the Memorandum of Association, see below) may state that the executive directors constitute a collective body. The internal restriction of the executive directors' powers is not effective against a third party. Under Slovak law, a violation of these duties by an executive director will not (alone) affect the validity of a contract with a third party, but the s.r.o. may hold the executive director in question liable for damages.

b) Formation

- The foundation act is a Memorandum of Association or Foundation Deed in the case of a sole shareholder. It has to be notarized;
- Setting up an s.r.o. is not complicated and can be accomplished easily;
- A supervisory board is not an obligatory company body.

c) Costs of Formation

Typically, the estimated total public fees (signature certification & Commercial Register fee) for the formation of an s.r.o. amount to approximately to €400 (€250 in the case of electronic filing).

The attorney's fees for services rendered in the process of establishing and incorporating an s.r.o. vary depending on the number of shareholders, business authorizations sought and instruments the shareholders wish to put in place, such as a Shareholder Agreement, etc.

d) Minimum Registered Capital

The minimum registered capital required for an s.r.o. is €5,000. In the light of recent developments in Slovakia's corporate law, it is recommended to set up a company with capital reflecting the amount of liabilities assumed by the company in order to mitigate the risk that the company could be considered "in crisis" or even insolvent.

Nevertheless, at least 30% of each shareholder's monetary contribution and a half of the total registered capital must be paid-up before the company's registration in the Commercial Register. In the case of a sole shareholder, the registered capital has to be paid-up entirely.

e) Limited Liability

The shareholders of the entity are not personally liable for the company's debts. The shareholders however provide a guarantee for the company's debts up to the extent of their unpaid contribution in the registered capital.

2. Slovak Joint-Stock Company – a.s.

a) Legal Entity

- An a.s. (akciová spoločnosť) is a legal entity in which the shareholders are not liable for the debts of the company during its existence;
- It is more complicated to form and operate than an s.r.o. and additional costs arise in connection with keeping the register of

shareholders;

- Hence, the rules for an a.s. are generally less flexible compared to the rules for forming a limited liability company;
- A company can be founded by one founding shareholder – a legal entity; otherwise there must be two or more individuals or legal entities;
- An a.s. may have the form of a private a.s. or, where its shares (or some of them) have been listed on the stock exchange in any EEA member state, a public a.s.;
- Registered shares may be issued as certified or book-entry securities, whilst bearer shares are issued in book-entry form only;
- Corporate bodies mandatorily include a General Meeting, a Board of Directors and a Supervisory Board;
- A General Meeting consists of all company shareholders and takes place at least once a year. It is positioned as the supreme body holding powers, e.g., in personal matters (electing, remunerating corporate body members) as well as deciding on the distribution of profits and amending the Articles of Association.

b) Formation

The foundation act is either a Foundation Deed or Foundation Agreement in the case the company is established without a call to subscribe shares or the minutes from the constituent General Meeting where the registered capital is subscribed by more shareholders on the basis of a call. All of these documents must include Articles of Association (By-laws) containing



mandatory information and must be prepared in the form of a notarial record.

c) Costs of Formation

Typically, the estimated total public fees (signature certification and Commercial Register fee) for the formation of an a.s. amount to approximately €900 (€600 in the case of electronic filing). The attorney's fees for services rendered in the process of establishing and incorporating an s.r.o. may vary significantly depending on the number of shareholders, method of establishing, etc.

d) Minimum Registered Capital

The minimum registered capital required for an a.s. is €25,000. At least 30% of its subscribed registered capital must be paid up by the time of the submission of the proposal for registration to the Commercial Register.

e) Limited Liability

The shareholders of the entity are not personally liable for the company's debts.

Note: Persons acting on behalf of the company before the company's incorporation in the Commercial Register are liable for the obligations which arise therefrom – these

obligations can be assumed by the company within 3 months from its incorporation, and then it is bound by such acts from when it began.

3. Other types of entities

There are three other types of business companies: a Limited partnership company (k.s.), an Unlimited partnership company (v.o.s.), and a Simple joint-stock company (j.s.a.) However, these forms are not very often used as vehicles in real property transactions.

A specific form of entity, a “flat owners’ cooperative” is not unusual in Slovakia. However, it is more a residue from past cooperative ownership of blocks of flats. Only rarely is it used as an investment vehicle for developing blocks of flats today.

This overview is for information purposes only.

Under no account can it be considered as either a legal opinion or advice on how to proceed in particular cases or on how to assess them. If you need any further information on the issues covered by this overview, please contact Ms. Andrea Butašová (butasova@peterkapartners.sk) or Mr. Marián Lauko (lauko@peterkapartners.sk).

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