Bulgaria

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1. Acquisition of real estate

Bulgarian legislation is part of the continental European legal family. Similarly to most European countries, Bulgaria follows the civil law tradition and operates a codified law system.

The real estate regime in Bulgaria is governed by:

- the Law on Property;[1]
- the Law on State Property[2] and the Regulation on the Implementation thereof;
- the Law on Municipal Property[3] and the Regulation on the Implementation thereof;
- the Law on Property and Use of Agricultural Land[4] and the Regulation on the Implementation thereof;
- the Law on Forestry[5] and the Regulation on the Implementation thereof;
- the Law on Structure of Territory;[6]
- the Law on Cadastre and Land Registry;[7] and
- the Ordinance on Registrations.[8]

The Law on Obligations and Contracts[9] sets out the legal framework in Bulgaria with regard to lease agreements. Explicit statutory provisions for commercial lease agreements are provided for in the Law on Commerce.[10]

1.1 Types of ownership

(a) Absolute ownership

The state, municipalities, natural persons and legal entities can all acquire and hold title to real estate in Bulgaria.

1 Promulgated in *State Gazette*, Issue No 92/16.11.1951 as amended and supplemented.
2 Promulgated in *State Gazette*, Issue No 44/21.05.1996 as amended and supplemented.
3 Promulgated in *State Gazette*, Issue No 44/21.05.1996 as amended and supplemented.
4 Promulgated in *State Gazette*, Issue No 17/01.03.1991 as amended and supplemented.
5 Promulgated in *State Gazette*, Issue No 125/29.12.1997 as amended and supplemented.
6 Promulgated in *State Gazette*, Issue No 1/02.01.2001 as amended and supplemented.
7 Promulgated in *State Gazette*, Issue No 34/25.04.2000 as amended and supplemented.
8 Promulgated in *State Gazette*, Issue No 101/18.12.1951 as amended and supplemented.
9 Promulgated in *State Gazette*, Issue No 275/22.11.1950 as amended and supplemented.
10 Promulgated in *State Gazette*, Issue No 48/18.06.1991 as subsequently amended and supplemented.

(b) Joint ownership

Two or more persons may share ownership of the property. The most important implication of joint ownership is that jointly owned property is managed by the majority owner(s), but title thereto can only be transferred with the consent and participation of all title owners.

Any of the co-owners may at any time request partition of the undivided interest to the real estate and become the sole owner of a portion thereof, provided such portion complies with the legal and technical requirements in order to exist as a separate object of ownership:

- The partition of joint property may be accomplished either by way of execution by the co-owners of agreement for voluntary partition, or by a court ruling should the co-owners fail to reach an agreement on the partition.
- In the event that the respective co-owned real estate may not be divided in portions complying with the legal and technical requirements for separate objects of title, joint ownership to such real estate might be terminated by public auction procedure organised by the court. Each of the co-owners may take part in the auction procedure and buy the whole property at the highest price suggested by any of the bidders.

(c) Condominium ownership

Condominium ownership is a specific type of ownership, where separate floors or premises in a building are owned by different owners, and the common parts of the building (eg, the foundations, the external walls, the internal dividing walls between separate parts, the stairway, the roof, and so on) are under joint ownership of the owners of separate premises in the building:

- Each owner of separate premises in a building owns an undivided interest in the common parts of such building, which undivided interest is expressed as the ratio between the area of the individual premises owned thereby and the total area of the building.
- Common parts may not be partitioned or owned as a separate object by any of the owners of separate premises in the building. The respective undivided interest of the common parts is considered a supplement to the separate objects of title in the building (apartments, office premises, floors and so on) and the sale of such objects implies also the sale of corresponding undivided interest of the common parts, even if not explicitly mentioned.

1.2 Limited *in rem* rights

Under the Law on Property, title can be acquired and held over limited rights *in rem*, as follows below in this section.

(a) Superficies rights

A person who has title to a plot of land may transfer to any third party a superficies right (ie, the right to construct and keep a building on the transferor's plot of land), whereupon the transferee becomes the owner of the building. Generally, this is

performed either by way of a sale and purchase agreement whereunder the owner of the land transfers the building without the underlying land (in the event that the building is in existence at the time of title transfer thereon), or by way of an agreement for the granting of the superficies right (in the event that the building for which the superficies right is granted is not developed at the time the superficies right is granted).

In the first scenario, the superficies right is implicitly transferred together with title over the building. In the second scenario, the superficies right may be granted for a limited or an unlimited period of time. If the superficies right has been granted for a limited period of time, upon expiration of that period title to the building automatically reverts to the owner of the land by operation of law, and no compensation is due to the former owner of the building.

If the building is destroyed, then regardless of the reasons, its owner is entitled to construct it again. The owner of the building may transfer title to the building to third parties, but only after first offering it to the owner of the land on the same terms. If the owner of the land rejects the offer, the owner of the building is free to transfer it to any other party, but only on terms no more favourable than those offered to the owner of the land.

(b) Easement rights

Easement rights under Bulgarian law are regulated in various legislative acts for particular industry sectors, such as the electricity and water sectors, and there is no unified legal framework on the matter. The main principles underlying the regulation of easement rights are the following:

- Easement rights may be granted by the owner of the servient land against consideration and by virtue of an agreement. Easement rights may also arise by virtue of law in favour of owners of certain objects.
- The change in the ownership of the real estate does not terminate the effect of the easement rights in respect of the dominant or servient land.
- Easement rights are inseparable rights, which may be exercised entirely in favour of each part of the dominant land and entirely encumber each part of the servient land, even where the dominant point and the servient plot are separated.
- The easement right may be used solely for the needs of the dominant land.
- The owner of the servient land has no right to relocate the easement right.

(c) Rights of way

Under the Law on Structure of Territory, a right of way through another's plot of land may be created against consideration by a written contract bearing notarised signatures. Where no agreement has been reached among the parties and there is no other economically feasible technical solution, the right of way may be created by an order of the respective municipality mayor. A right of way through state-owned or municipal-owned plots of land may be created against consideration as per the law; or, where there appears to be no economically feasible technical solution, by an order of the regional governor or by order of the municipality mayor, as the case may be.

The right of way should not result in any deterioration of the conditions for development of the plots of land, contrary to any established form of long-term use of the plots of land. Similarly, the right of way must not affect authorised construction works or existing buildings, save as where expressly agreed between the parties in the contract. Any contracts or orders creating rights of way should be entered into the respective land register on the record of the plot constituting the dominant estate and on the record of the plot constituting the servient estate.

(d) Usufruct

Usufruct is a right entitling its holder to use a piece of real estate (land or building), so as to extract the economic or factual user benefit of such real estate. Such a right, once granted by the owner to the recipient, becomes non-transferable and terminates with the termination of existence of its holder. Thus, the usufruct is rendered a legal right with little or no application in business transactions.

1.3 Preliminary agreements

In order to guarantee the execution of a contemplated transaction in real estate, the parties may execute a preliminary agreement in writing. By entering into a preliminary agreement, both parties undertake to execute the transaction under the terms and conditions stipulated therein. If one of the parties refuses to enter into the final agreement, the other party can file a statement of claim before the competent court. By virtue of the court decision, the preliminary agreement is proclaimed as final and no further transfer agreement is required. Such decision of the competent court replaces the intended final agreement for transfer of title and is subject to registration with the relevant Land Registry (see section 1.10).

1.4 Land registry entries

Regardless of the way they are documented (ie, notary deed, written agreement or court ruling), transfers of ownership or limited rights *in rem* in respect of real estate must be registered with the relevant Land Registry (see section 1.10 below). Thus:

- The registration regime in respect of transactions relating to real estate and rights thereto is intended to provide a buyer of real estate with the opportunity to check whether the transferor is the owner of the real estate and whether title to the property is free and clear of any encumbrances, liens and third-party rights.
- Under Bulgarian property law, 'registration' is an act of a competent judicial body whereby certain circumstances are recorded at the Land Registry and the documents evidencing such circumstances are filed in special books. Any deeds for transfer of title to real estate, including by way of sale, donation, exchange, transfer of title in lieu of payment and so on, for the creation of limited rights *in rem* over real estate (eg, usufruct or superficies) and for the acknowledgement of all of the above rights, such as notary deeds of ownership, deeds of state ownership, deeds of municipal ownerships and other deeds expressly envisaged by law, are subject to registration.
- Certain statements of claim concerning real estate may also be registered at

the Land Registry. As a result, the acquirer of the real estate in respect of which a statement of claim was registered will take title subject to the outcome of the registered claim. If, as a result of such claim, the transferor ends up losing its title to the transferred real estate, this will result in the transferee's loss of title to such real estate. Such statements of claim will typically be those which seek the rescission, avoidance, or proclamation of the nullity of a transfer agreement. Statements of claim concerning the conversion into a final agreement of a preliminary agreement for transfer of real estate are also registrable. However, a statement of claim seeking the recognition of an ownership right in real estate against an alleged non-owner of the same real estate are not subject to registration. Thus, a major group of title disputes, namely those that do not involve a dispute over a real estate transfer agreement, including restitution claims, are not capable of being discovered by searching the Land Registry.

- Encumbrances are also subject to registration. They are not *in rem* rights in themselves, but they can substantially modify the scope or benefits incidental to *in rem* rights. Under 'encumbrance' over real estate, one normally understands a mortgage over the real estate, other types of security right (such as a pledge over the going concern of the owner of the real estate) or attachment of property. The effect of encumbrances is that, once created and registered at the Land Registry (see further below), every subsequent acquirer of the encumbered real estate takes it subject to such encumbrances. Thus, the buyer of a mortgaged property assumes the position of a mortgagor *vis-à-vis* the mortgagee. The acquirer of attached property (attached property may be freely transferred) will not be recognised by the transferor's creditors who registered the attachment as a legitimate transferee of the attached property and thus will have to suffer such creditors' action against the acquired property.

1.5 Verifications needed prior to buying real estate

The general terms regulating the sale and purchase of real estate are to be found in the Law on Obligations and Contracts and the Law on Property, and certain special rules applicable to companies in the Law on Commerce. The Law on Structure of Territory also contains important provisions on zoning regulation.

There is no unified legal due-diligence procedure in Bulgaria. Nonetheless, before purchasing real estate it is recommended that the buyer performs a due diligence review of title and reviews the status of the targeted real estate, including the ownership title history, zoning and constriction requirements.

(a) Title history

It should be verified that there is a valid and marketable ownership title held by the seller, as well as other issues. The following key matters should be verified:

- a clean, valid and marketable ownership title is held by the seller – the seller has to be, and his predecessors must have been, owner(s) of the targeted real estate in order to avoid any risk of the transaction being rescinded or

annulled. Such title review covers the preceding 10 years as a minimum, because according to Bulgarian law a period of 10 years of uninterrupted adverse possession constitutes title for a person who directly and/or through its transferors has exercised such uninterrupted possession. However, under certain circumstances it might become necessary to review title documents for a longer period of the title history;

- no liens or encumbrances over the property exist – the buyer should be fully aware as to whether there are any registered liens and/or encumbrances over the targeted real estate (eg, mortgages, easements, injunctions, going-concern pledges, limited property rights) established in favour of third parties. A general principle under Bulgarian law is that liens and encumbrances 'follow the property' (ie, registered liens and encumbrances can be enforced against the new owner);
- no other registered rights in favour of third parties exist – when there are registered rental or lease agreements over the targeted real estate, the buyer will be bound by them until the expiration of their term;
- no court or restitution claim exists;
- no state and municipal expropriation rights exist;
- no debts of the seller exist which could lead to a sale of the real estate by the state authorities; and
- the zoning and construction status of the real estate and any zoning and/or construction restrictions are known.

The buyer should verify the zoning and construction status of the real estate and ascertain the construction parameters and any existing construction limitations, in the event that the real estate is purchased for construction development.

(b) Zoning rules that must be verified

The main planning regulations in Bulgaria are codified in the Law on Structure of Territory. It provides the guiding principles of territorial development, relevant authorities and procedures that should be complied with in the course of planning and construction processes. In addition, there are a number of subordinate regulations issued by governmental or local municipal bodies which implement in detail the principles set out in the Law on Structure of Territory. There are also other legislative acts which supplement the Law on Structure of Territory regulating different aspects of the planning and construction process, such as cadastral registration of land, environmental protection, waste management and others. The zoning and planning stage comprises an approval of a detailed zoning plan (DZP), or an amendment of the existing DZP, applicable when the provisions of the current DZP are not sufficient for the investor. The effective DZP is the first precondition for commencing the construction works.

The DZP transforms the unregulated land plot into a regulated land plot by way of determining its territorial construction borders (regulating lines) and providing an access to the land plot from a street. In relation to the future construction project on a land plot, the DZP specifies the construction parameters such as type and height of

the building(s), the maximum density and intensity allowed, as well as the minimum green yard area.

(c) ***Competent authorities on zoning rules***

In Bulgaria there are two levels of territorial management – central (ie, national) and local (ie, municipal). Depending on the territorial, social and economical significance of a development project, planning decisions are made by:

- the Minister of Regional Development – for projects of national significance;
- the district governor – for projects that affect more than one municipality or are significant for a particular district;[11] and
- the mayor/municipal council – competent for planning decisions in a particular municipality depending on the territorial coverage of the project.

In most cases, for developments within an urban area, the DZP is approved by the municipal authorities – by the mayor of the municipality or by the municipal council. In respect of developments located beyond the boundaries of urban areas, the competent authority is the municipal council of the municipality where the piece of land for development is located.

In the case of buying a building (or part of it) which has been completed and put into operation, no authorities are involved in the process and the buyer does not have to take into account any particular zoning rules.

1.6 Is clearance needed from any authority to buy real estate?

(a) ***Acquisition by foreign individuals or entities***

In general, foreigners are entitled to acquire ownership and limited *in rem* rights over buildings and limited *in rem* rights (but not ownership) over land. Foreign citizens may acquire land through legal inheritance, but in the latter case it should be transferred to Bulgarian individuals or legal entities domiciled in Bulgaria within three years as of the acquisition date.

Bulgaria has entered the European Union, and come out of a situation where its Constitution prohibited foreign ownership of land. As one of the required steps towards integration, the Bulgarian Constitution was changed to allow foreign ownership of land based on provisions of international treaties. Thus, the provisions of Bulgaria's EU Accession Treaty governing ownership of land by EU citizens and companies will apply. However, such provisions require national implementation legislation to be enacted. Unfortunately, the provisions for such implementation legislation are not very clear and issues concerning foreign ownership of land in Bulgaria remain unsettled.

However, foreign natural persons and legal entities may become the sole, majority or minority owners of locally registered companies. Foreign companies are in no way restricted in acquiring and transferring title to land or buildings/facilities, or rights to use or develop real estate. The underlying rationale is that the

11 The territory of the Republic of Bulgaria is divided into 28 districts, each managed by a district governor.