



# Real Estate

in 31 jurisdictions worldwide

Contributing editor: Sheri P Chromow

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# Bulgaria

**Bozhko Poryazov**

Delchev & Partners

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## Acquisition of real estate

### 1 Legal system

How would you explain your jurisdiction's legal system to an investor?

Bulgaria has a civil law system, which exists on the base of codes, acts and regulations of various importance. Case law is the secondary source of law only in case of a legislation gap for certain relationships or where certain legal provisions are ambiguous.

Under Bulgarian law, a real estate transaction has to be made in a special notarial deed form.

Cancellation of contracts for acquisition, establishing or termination of real estate rights has to be made by the court.

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### 2 Recording conveyance documents

What are the legal requirements for recording conveyance documents?

#### Contract form

The general rule is that a transfer of a real estate is made through a written contract in a special notarial deed form. The contract has to be signed before a Bulgarian notary officer, acting in the region of the respective regional court where the property is located.

Exceptions are made in respect of contracts for acquisition or disposition of municipal or private state properties. Here, the legislation provides only a written form of the transfer contract, so the notarial form is not required.

The form and content of the notary deed is explicitly regulated in the Bulgarian Civil Procedural Code. If any of the obligatory requirements is missing, the notary deed will not be registered in the Real Estate Register.

#### Registration of notary deed

Each notary deed has to be registered in the Real Estate Register, managed by the Bulgarian Registration Agency.

The signed notary deed is submitted by the notary to the Real Estate Register on the day of its signing. The signed notary deed is registered in the Real Estate Register after instruction from the judge for registration. The parties receive an original copy of the notary deed only after completion of the registration in the Real Estate Register.

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### 3 Foreign investors

What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

#### Restrictions on acquisition of real estate

There is no restriction for a foreign investor (an individual or a legal entity) to acquire a building (for example, an apartment, a house, etc).

There are restrictions on the acquisition of land by foreigners. Bulgarian legislation distinguishes two groups of foreigners

depending on their residency, namely foreign individuals residing outside the EU and foreign legal entities incorporated outside the EU, and EU citizens and legal entities.

The former have the right to acquire ownership rights over land under the terms and conditions of an international agreement signed between Bulgaria and the respective country. Presently, however, there are no such international agreements signed between Bulgaria and non-EU countries. Practically, non-EU foreign individuals and foreign legal entities do not have the right to acquire ownership over land in Bulgaria.

EU citizens and EU legal entities have the right to acquire ownership over land under the terms and conditions of Bulgaria's EU accession treaty: there is no restriction for EU citizens permanently residing in Bulgaria; there is a five-year restriction (until the end of 2011) on ownership over land for second residences for EU citizens not residing permanently in Bulgaria; and there is a seven-year restriction (until the end of 2013) on ownership over agricultural land, forest and forest land.

#### Real estate transfer taxes, fees and stamp duties

Normally, a real estate transaction triggers the following costs:

- Local real estate transfer tax: the amount of the tax for 2008 varies between 2 per cent and 4 per cent (the Local Taxes and Fees Act contemplates that the rates of the local real estate transfer tax for 2009 will vary between 1.3 per cent and 2.6 per cent) and is levied on the higher of the tax evaluation of the real estate and the purchase price. Each year the rate of the local real estate transfer tax is determined by the municipal council. The tax is paid to the municipality where the property is located.
- Notary fee: the notary fee is based on a progressive table. The maximum notary fee is 3,000 leva (approximately €1,500) VAT exclusive. The fee is paid to the notary officer making the real estate transaction.
- Real estate registration stamp duty: the real estate registration stamp duty is 0.1 per cent and is levied on the higher between the purchase price and the tax evaluation of the real estate. The real estate registration stamp duty is paid to the Registration Agency.

#### Real estate taxes

The owner of a real estate is obliged to pay the following taxes and charges:

- Annual real estate tax: this tax is paid to the respective municipality where the real estate is located. The rate of the tax varies between 0.15 per cent and 0.3 per cent (the Local Taxes and Fees Act contemplates that the rates of the annual real estate tax for 2009 shall vary between 0.05 per cent and 0.2 per cent). Individuals pay real estate tax on the basis of the tax evaluation. Companies pay real estate tax on the basis of the book value.

- Annual waste disposal fee: the waste disposal fee is determined by each municipality. Individuals pay a waste disposal fee on the basis of the tax evaluation. Companies pay the real estate tax on the basis of the book value. There are also other ways for companies to pay the waste disposal fee (for example, based on waste bins, etc).

#### Taxation upon disposal of real estate

- Corporations: the corporate income tax rate is 10 per cent. A corporation shall pay corporate income tax on the gain derived from the disposal of a real estate in accordance with the rules for determination of the corporate income tax base.
- Individuals: the personal income tax rate is 10 per cent. An individual must pay a 10 per cent tax on the capital gain from the disposal of a real estate unless the gain is exempt from taxation.

#### VAT

The Bulgarian VAT rate is 20 per cent. In the majority of the cases, a real estate transaction triggers VAT implications.

#### 4 Exchange control

If a non-resident invests in a property in your jurisdiction, are there exchange control issues? What about return of capital?

There are no exchange control restrictions in Bulgaria. Capital can be freely repatriated provided all taxes have been paid. In this regard, it is important to note that upon repatriation, banks require documents evidencing the grounds for the repatriation or transfer.

#### 5 Legal liability

What types of liability does an owner of real estate face? Is there a standard of strict liability and can there be liability to subsequent owners? What about tort liability?

There are a number of tort provisions existing in various acts and municipality regulations (for example, each owner is responsible for cleaning the area of the pavement around the building and must scatter it with sand or salt). The owner of a building is obliged to keep the building in a good condition. The owner is liable for any damage caused by collapse of the building due to lack of maintenance of the building or any work related to the building.

#### 6 Protection against liability

How can owners protect themselves from liability and what types of insurance can they obtain?

An owner can protect itself from liability by virtue of insurance. Insurance companies offer a great variety of real estate insurances.

#### 7 Choice of law

How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction?

According to the Bulgarian conflict of laws rules, agreements are governed by the law determined by the parties. However, agreements concerning real estate or any limited rights related to real estate located within Bulgaria shall be exclusively governed by the Bulgarian law, respectively by the Bulgarian courts.

#### 8 Subject-matter jurisdiction

Does subject matter jurisdiction exist? Who are necessary parties? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

In any case of real estate litigation, the venue is where the real estate is located. Depending on the amount of the claim, either the respective regional or district court shall be competent.

A party does not need to be qualified to do business in Bulgaria to enforce remedies in Bulgaria.

#### 9 Investment entities

What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

There are five types of entities, recognised by Bulgarian law: private partnerships (SD), commandite partnerships (KD), limited liability companies (OOD), joint stock companies (AD), and commandite partnerships limited by shares.

There are no pass-through entities under the Bulgarian legislation. From a tax perspective, all kinds of legal entities are treated identically.

The limited liability company and the joint stock company provide the best shield for the ultimate owners, because these two types of companies are 'capital companies' and the liability of the owners is limited.

#### 10 Foreign investors

What form of entities do foreign investors customarily use in your jurisdiction?

Foreign investors usually incorporate limited liability companies or joint stock companies.

#### 11 Organisational formalities

What are the organisational formalities of creating the above entities?

What requirements does your jurisdiction impose on a foreign entity?

What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

The limited liability company (OOD) is formed by virtue of a contract signed between the shareholders (articles of association). Where there is only one shareholder (sole-owner limited liability company (EOOD)), the sole owner signs a constituent act. The minimum share capital of an OOD is 5,000 levs (approximately €2,500). Upon incorporation, at least 35 per cent of the share capital should be paid in. The unpaid amount should be paid within two years of incorporation of the company.

The registration process is quite formal, requiring a lot of accompanying documentation (for example, specimen signatures of the directors, declarations, constituent protocols, etc). The OOD is managed by one or more directors. The company is considered incorporated after its registration in the Commercial Register.

The minimum share capital of a joint stock company (AD) is 50,000 (approximately €25,000). Upon incorporation, all shares are to be subscribed and at least 25 per cent of the share capital is to be paid in.

From a Bulgarian tax perspective, both the limited liability company and the joint stock company are treated identically, so there are no specific tax advantages pertinent to any of these companies.

**12 Documentation**

Does your jurisdiction or customs recognise a non-binding form of agreement? Is there a form of non-binding agreement before a contract? Is it customary to take the property off the market while negotiation of a contract is ongoing?

Concerning real estates the Bulgarian law does not recognise a non-binding form of agreement. It is not customary for the property to be taken off the market. In the past few years, however, a new tendency has been observed where the buyer pays a small amount for the property to be taken off the market.

**13 Contract of sale**

What are typical provisions in a contract of sale?

By law the notary deed has to contain the following mandatory information:

- year, date, month of conclusion;
- name of notary officer issuing the deed;
- full name, PIN number of the persons who are parties to notary deed as well as number, date of issuance and issuing authority of the ID of the representatives of the parties;
- detailed description of the real estate;
- purchase price;
- mode of payment of the purchase price;
- brief description of the documents, evidencing the title;
- signatures and hand written full names of the parties' representatives signing the notary deed; and
- signature of the notary officer.

Apart from the above mandatory information the notary deed may contain other provisions including, inter alia, sellers' warranties and representations concerning title, sellers' warranties and representations concerning lack of encumbrances, penalty clauses, eviction clauses, etc.

**14 Environmental clean-up**

Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

The Bulgarian Environmental Protection Act provides that the owners and users of land shall be obliged to undertake measures for the prevention of any harmful modification endangering the soil. Furthermore, whoever causes any harmful modification to the soil shall be obligated to restore the soil to the state preceding the damage at her or her own expense.

There is no general rule specifying which party will take responsibility for future clean-ups in a real estate transaction. The parties have the freedom to negotiate the responsibilities for future clean-ups; however, such contractual provisions are not binding on the authorities, which may claim responsibility in accordance with the above rules.

**15 Leases**

What are typical representations and covenants regarding leases? Do they cover brokerage agreements and do they survive closing? Are estoppel certificates customarily required and can estoppel certificates substitute for representations?

Typical representations and covenants regarding leases include among other things:

- description of the real estate;
- rent;

- way of payment;
- term of contract;
- method of termination;
- condition of the real estate upon conclusion of contract;
- the party bearing the costs for repairs; and
- subleases covenants.

Customarily, rental agreements do not cover brokerage. Estoppel certificates are not common.

**16 Leases and mortgages**

Is a lease generally subordinate to a mortgage pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a mortgage upon foreclosure? Do lenders typically require subordination and non-disturbance agreements?

Customarily, a lease is neither subordinate to a mortgage nor superior in priority.

However, if a lease is registered in the Real Estate Register, registration gives a certain advantage to the tenant in case of a foreclosure. The subsequent owner should comply with the terms of the lease agreement, but for not more than one year after the transfer of the real estate.

At this stage of development of the Bulgarian legal market, lenders do not typically require subordination and non-disturbance agreements.

**17 Delivery of security deposits**

What steps are taken to ensure delivery of security deposits to a buyer? How common is it to get a security deposit under a lease? Do leases customarily have periodic rent resets?

Security deposits are not very common in sale purchase transactions. It is a common practice, however, to require a security deposit under a lease agreement. It is also very common practice for lease agreements to contain rent reset clauses.

**18 Due diligence**

What is the typical method of a title search and is it customary to order searches? Is there something akin to title insurance and opinion letters? Does your jurisdiction provide statutory priority for recorded instruments?

It is customary to order title searches. Depending on the transaction the title search is based on information obtained from the Real Estate Registry, the notary public and other state and municipal bodies.

Title insurances are not very common but have recently gained popularity because of the vast foreign investment in the Bulgarian real estate market.

Bulgarian legislation provides statutory priority for recorded instruments.

**19 Reviews**

Is it customary to arrange an engineering or an environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available?

It is common to arrange engineering reviews for large real estate transactions. Bulgarian legislation explicitly requires a special environmental impact assessment to be carried out prior to approval of investment projects, enumerated in the Bulgarian Environmental Protection Act. Representations and indemnities are gaining popularity. Environmental insurance is not very common.

**20 Review of leases**

Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

Lease agreements for business purposes are usually subject to review by lawyers.

Some of the important legal issues that are to be taken into consideration upon conclusion of a lease agreement include the following:

- purpose of usage of the real estate;
- due date for payment of rent and issuance of invoices;
- deposit arrangements;
- term of contract and prolongation;
- ways of termination;
- condition of the real estate at conclusion;
- type of repairs and the party bearing the costs;
- sublease covenants; or
- registration of the real estate with the Real Estate Registry.

**21 Other agreements**

What other agreements does a lawyer customarily review?

The agreements subject to review depend on the nature of the real estate transaction. Most often, a lawyer reviews bank loan agreements, management agreements, service and maintenance agreements, construction contracts, preliminary sale purchase agreements and brokerage agreements, utilities agreements, escrow agreements, etc.

**22 Closing**

How does a lawyer customarily prepare for a closing?

At closing, depending on the type of entity involved and the specifics of the transaction, the following documents are prepared or obtained, inter alia:

- notary deed;
- protocols of the general meeting of the shareholders, decisions of the board of directors;
- certificates for good standing of a legal entity;
- declarations by the seller for lack of public liabilities;
- certificates for lack of encumbrances;
- copies of ownership documents,
- tax evaluation certificates;
- sketches of properties; and
- powers of attorney.

**Financing****23 Form of lien**

What is the method of creating and perfecting liens?

The most commonly used method for creating a lien over a real estate is the mortgage. There are two types of mortgages under the Bulgarian legislation: legal and contractual mortgages. Every mortgage is registered in the Real Estate Register. A legal mortgage is established when a part of the purchase price is financed by a bank loan or when the seller has not received the full amount of the purchase price. In this case, the seller has the right to register a mortgage for the outstanding amount of the purchase price. A legal mortgage is created through a written application form, signed by the creditor. Usually, the application form is filed together with the notary deed. A contractual mortgage is established in the form of a notary deed. The notary deed should comply with the mandatory requirements concerning its content. In addition, the notary deed should contain information on the loan that is secured through the mortgage.

**24 Legal requirements**

What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?

In theory, there should be no ramifications. Bulgarian legislation does not make any difference between Bulgarian or foreign lenders.

In these instances, complications usually arise in relation to the official and unofficial documents that the foreign lender would need to procure in order to prove its existence as a legal entity and the powers of the signatories. Some of these documents would need to be provided in a special certified form in order to be recognised under Bulgarian law.

In this context, it may be noted that loans are to be registered with the Bulgarian Central Bank.

**25 Interest**

Is interest charged on a spread over LIBOR, Euribor or an equivalent? What rate of interest is unreasonably high in your jurisdiction and what are the consequences if a loan exceeds the reasonable rate?

Generally, the interest rate is fixed as a spread over Euribor.

Bulgarian corporate income tax uses the term 'market interest', which is defined as 'the interest that would have been payable under a loan between unrelated parties containing the same terms and conditions'. The law goes further to specify that market interest shall be determined in accordance with the market conditions by reflecting all qualitative and quantitative characteristics of the transaction such as form, amount and currency of extended financing, term of financing, type, amount and liquidity of collateral, credit risk and other risks related to the transaction, profile of the borrower, as well as all other terms and conditions influencing the amount of interest.

Interest expense non-compliance with market interest at the moment of conclusion of the loan agreement may be deemed tax avoidance under the Bulgarian corporate income tax regulations. The Bulgarian tax implications of interest that is deemed usurious shall be non-recognition of the interest expense for tax deductibility purposes.

**26 Enforcement**

How are remedies enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding?

In order for a lender (creditor) to initiate enforcement against a debtor under a mortgage, the lender should apply to the court and obtain a ruling. Afterwards, the execution is made by a public or a private bailiff.

Generally, the bailiff organises a procedure for public sale of the property. Once the property is sold, the bailiff is obliged to transfer the due amount covered by the collateral to the lender. The remainder of sale proceeds, if any, is released to the debtor.

Foreclosure proceedings widely vary in duration. Normally, they last several months, but the duration may be much longer.

**27 Protection of collateral**

What actions can a lender take to protect its collateral until it has possession of the property?

Under Bulgarian legislation, a lender will not receive possession of real estate that is mortgaged in its favour. In view of the above, it would not be necessary for the lender to undertake actions to protect its collateral.

**28 Recourse**

Do the security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy filing?

The lender has the right to recourse to all assets of the borrower by virtue of the legislation, and having collateral over certain borrower's assets does not limit lender's right to recourse over all assets of the borrower. Security documents do not provide recourse to all assets of the borrower; they provide the lender with a privilege for recourse over the mortgaged real estates.

In case of bankruptcy of the borrower the lender has priority over the assets that serve as collateral, that is, the mortgaged real estates. In case the agreed collateral is not enough to cover the borrower's liabilities to the lender, the lender has the general right to spread its claims over the rest of the borrower's assets.

**29 Cash management systems**

Is it typical to require a cash management system and do lenders typically take reserves?

Cash management systems are not customarily required by lenders.

**30 Credit enhancements**

What other types of credit enhancements are common? What about forms of guarantee?

Credit enhancements customarily include personal guarantees (for example, given by the shareholders, third parties, etc), promissory notes, special pledges on moveables, special pledges on borrower's receivables, etc.

**31 Covenants**

What are commonly used covenants in loan documents? What is the difference depending on asset classes?

Loan documents commonly contains covenants concerning:

- loan amount;
- purpose of the loan;
- term for releasing of the loan (time for utilisation of the loan amount by the borrower);
- repayment schedule;
- interest rate and penalty interest rate (in case of default);
- term of the contract;
- collateral;
- conditions for enforcing the collateral;
- additional credit enhancements; and
- insurance clauses, etc.

**32 Financial covenants**

What are typical financial covenants?

Please see question 31.

**33 Bankruptcy**

Briefly describe the bankruptcy system in your jurisdiction?

Insolvency proceedings are commenced if a debtor is insolvent or overindebted. The insolvency may be claimed by the debtor itself, or by a creditor, or the State Agency for Collection of Public Liabilities.

If the court establishes insolvency or overindebtedness, the court proclaims this and opens the insolvency proceedings. A liquidator is appointed whose function is to supervise the administration of the affairs and liquidate assets.

Within very rigid deadlines, the creditors are to claim before the court their receivables from the insolvent debtor. Failure on the part of a creditor to claim its receivables will likely preclude it from collecting them. Creditors whose receivables have been accepted are included in the list of creditors and have the right to vote in the creditors' meeting.

During insolvency proceedings, a plan for reorganisation and recovery of the debtor may be approved by the creditors. If a plan for reorganisation and recovery is not proposed or the proposed plan is not approved, the court proclaims the debtor insolvent and orders termination of activities. A realisation or liquidation of the assets commences.

During the liquidation process the claims are paid to the creditors in the following seniority:

- claims secured through mortgage, pledge, etc;
- claims secured through the exercise of retention right;
- liquidation expenses;
- payroll expenses that have occurred prior to the date of opening of the insolvency proceedings;
- alimony due by the debtor to third parties by law;
- public liabilities to the state and the municipality such as taxes, customs duties, stamp duties, social security payments, etc, that have occurred prior to the date of the court decision for opening of the insolvency proceedings;
- claims that have arisen after the date of the court decision for opening of the insolvency proceedings and unpaid on the due date related to the continued activities of the debtor;
- unsecured claims that have arisen prior to the date of the court decision for opening of the insolvency proceedings;
- statutory or contractual interest on unsecured claims due after the date of the court decision for opening of the insolvency proceedings;
- repayment of a loan extended by a shareholder;

# Delchev & Partners

**Bozhko Poryazov**

**bozhko.poryazov@delchev-lawfirm.com**

8 Kaloyan st, 2nd floor (Corecom Building)  
1000 Sofia  
Bulgaria

Tel: +359 2 933 09 74  
Fax: +359 2 981 81 34  
www.delchev-lawfirm.com

- claims from gratuitous transactions; and
- expenses of the creditors in relation to their participation in the insolvency proceedings, with the exception of certain elements of these expenses.

The insolvency proceedings are terminated by a decision of the court when all claims are paid or the proceeds from the realisation of the assets have been depleted. Said decision of the court deletes the debtor and it ceases to exist as a legal entity.

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**34 Secured assets**

What are the requirements of creation and perfection of a security interest? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

The concept of creation and perfection and lockboxes are not known under the Bulgarian law.

**35 Single-purpose entity (SPE)**

Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy filing, has the concept been upheld?

Normally, lenders do not require that a borrower sets up an SPE. SPEs may be incorporated in any forms allowed under Bulgarian law.

The concept of an independent director does not exist in Bulgaria.