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Real Estate

in 31 jurisdictions worldwide

Contributing editor: Sheri P Chromow

2010



**Published by
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Real Estate 2010

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Real Estate 2010

Published by
Law Business Research Ltd
87 Lancaster Road
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Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
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2009

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ISSN 1756-7084

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Printed and distributed by
Encompass Print Solutions
Tel: 0870 897 3239

Law

Business

Research

Albania Evis Jani and Ekflodia Leskaj <i>Drakopoulos Law Firm</i>	3
Argentina Juan Manuel Quintana and Carolina Zang <i>Zang Bergel & Viñes Abogados</i>	9
Austria Peter Vcelouch and Manfred Ton <i>CHSH Cerha Hempel Spiegelfeld Hlawati</i>	17
Belgium Manuela von Kuegelgen <i>Simont Braun</i>	24
Brazil Maria P Q Brandão Teixeira, Carolina Moura Foz and Fátima Regina M C Andrade <i>Brandão Teixeira Ricardo e Foz Advogados</i>	30
Bulgaria Bozhko Poryazov and Emil Delchev <i>Delchev & Partners</i>	37
Croatia Emir Bahtijarević, Josip Marohnić and Marin Vuković <i>Divjak, Topić & Bahtijarević</i>	43
Cyprus Chrysthia N Papacleovoulou and Evi N Papacleovoulou <i>Law Chambers Nicos Papacleovoulou</i>	49
Dominican Republic Sarah de León Perelló and Carolina Silié <i>Headrick Rizik Álvarez & Fernández</i>	59
England & Wales Lucy Sturrock <i>Addleshaw Goddard LLP</i>	66
Estonia Raul Talts <i>Law Office Lentsius & Talts</i>	72
France Orrick Rambaud Martel – <i>Real Estate Group</i>	78
Germany Michael Wiehl, Harald Reitze and Jürgen Siegl <i>Rödl & Partner</i>	85
Greece Alexandra Ekonomou and Elina Kanataki <i>Drakopoulos Law Firm</i>	92
Hungary Zsófia Oláh, Szabolcs Perlaki and Tamás Polauf <i>CHSH Dezső</i>	98
India Amir Singh Pasrich, Simona Singh, Pradita Chandola and Deepti Badial <i>International Law Affiliates</i>	104
Japan Kenji Utsumi and Hiroto Inoue <i>Nagashima Ohno & Tsunematsu</i>	112
Lithuania <i>Law Office Vadapalas, Vaitekunas & Partners Eurolex</i>	119
Mexico Gonzalo A Vargas <i>González Calvillo, SC</i>	125
Poland Radosław Biedeckí and Łukasz Czujko <i>Biedeckí Biedeckí & Partnerzy</i>	132
Portugal Filipe Barata and Pedro Andresen Guimarães <i>Henrique Abecasis, Andresen Guimarães, Pedro Guerra & Álvaro Roquette Morais Sociedade de Advogados, RL</i>	139
Romania Ovidiu Văleanu <i>CHSH Gilesco & Partners</i>	145
Russia Andrey Zelenin <i>Lidings Law Firm</i>	151
Singapore Dorothy Marie Ng, Choo Ai Leen and Tan Teck Howe <i>WongPartnership LLP</i>	158
Slovakia Ladislav Poloma <i>CHSH Šiška & Partners</i>	165
Sweden Jan Litborn and Jan Berg <i>Advokatfirman Glimstedt</i>	172
Switzerland Yves Jeanrenaud and Josef Caleff <i>Schellenberg Wittmer Attorneys at Law</i>	178
Turkey Elvan Aziz and Erdost Pehlivan <i>Paksoy</i>	185
Ukraine Timur Bondaryev <i>Arzinger</i>	190
United Arab Emirates Jimmy Haoula, Rima Mrad and Natasha Bowcott <i>Bin Shabib & Associates (BSA) LLP</i>	197
United States Sheri P Chromow and Andrew L Jagoda <i>Katten Muchin Rosenman LLP</i>	206

Bulgaria

Bozhko Poryazov and Emil Delchev

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Transfer 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 basis of codes, acts and regulations of varying 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 acquiring, establishing or terminating real estate rights has to be made by the court.

2 Conveyance documentation

What are the legal requirements for documents recording conveyance?

Contract form

The general rule is that a transfer of a property 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 are 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.

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. Therefore, non-EU individuals and 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, forestry 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 tax for 2009 varies 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 of each municipality no later than 31 December of the previous year. The tax is paid to the municipality where the property is located.
- Notary fee: the notary fee is based on a progressive table and is levied on the higher of the tax evaluation of the property and the purchase price. The maximum notary fee is 6,000 levs excluding VAT. The fee is paid to the notary officer overseeing 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 highest value between the purchase price and the tax evaluation of the property. The real estate registration stamp duty is paid to the Registration Agency.

Real estate taxes

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

- Annual real estate tax: this tax is paid to the respective municipality where the property is located. The rate of tax for 2009 varies 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 property 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 property unless the gain is exempt from taxation.

VAT

The Bulgarian VAT rate is 20 per cent. In the majority of 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 repatriation 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 pavement around the building and must scatter it with sand or salt). The owner of a building is obliged to keep it in good condition, and is liable for any damage caused by collapse of the building due to lack of maintenance of the building or any work related thereto.

6 Protection against liability

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

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

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?

Agreements concerning acquisition or disposal of a property (or both), or any limited rights related to a property located within Bulgaria shall be exclusively governed by Bulgarian law and Bulgarian courts. Choice of law is not applicable for a real estate transaction.

According to the Bulgarian conflict of laws rules, agreements are governed by the law determined by the parties, however this general rule is not applicable for real estate transactions.

8 Jurisdiction

Which courts have subject-matter jurisdiction over real estate disputes? Which parties must be joined to a claim before it can proceed? 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 real estate litigation, the venue is where the property 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 in order 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 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 types of legal entities are treated identically.

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

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 for 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 (EOD)), the sole owner signs a constituent act. The minimum share capital of an OOD is 2 levs.

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 levs. 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 either of these companies.

12 Documentation

Is it customary in your jurisdiction to execute a form of non-binding agreement before the execution of a binding contract of sale? Will the courts in your jurisdiction enforce a non-binding agreement or will the courts confirm that a non-binding agreement is not a binding contract? Is it customary to take the property off the market while the negotiation of a contract is ongoing?

In the predominant number of real estate transactions it is not customary to execute a non-binding agreement before the execution of a binding contract of sale. It is also true that in the past two decades documents such as letters of intent have gained popularity and in some instances, these types of document are signed by the parties before execution of a contract of sale.

The Bulgarian courts will not enforce a non-binding agreement if such an agreement is clearly and indisputably drafted as non-binding.

It is not customary to take the property off the market while the negotiation of a contract is ongoing.

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 and month of conclusion;
- name of notary officer issuing the deed;
- full name and PIN number of the persons who are parties to the notary deed and number, date of issuance and issuing authority of the ID of the representatives of the parties;
- detailed description of the real estate;
- purchase price;
- method of payment of the purchase price;
- brief description of the documents, evidencing the title;
- signatures and handwritten 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, 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 acts endangering the soil. Furthermore, whoever causes any harmful changes 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 Lease covenants and representation

What are typical representations made by sellers of property regarding existing leases? What are typical covenants made by sellers of property concerning leases between contract date and closing date? Do they cover brokerage agreements and do they survive after the property sale is completed?

Customarily, sellers disclose the entire contents of the existing lease agreements to buyers. The typical representations concern the rent; term of lease; and registration of lease with the Real Estate Registry, if such representation is made.

In terms of leases the sellers of property normally undertake the obligation not to sign any lease agreements or make amendments to existing lease agreements.

Customarily brokerage agreements are not referred to.

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, the subsequent owner should comply with the terms of the lease agreement.

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 are security deposits under a lease? Do leases customarily have periodic rent resets?

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

18 Due diligence

What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? 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 insurance is an instrument that has recently gained popularity because of the vast foreign investment in the Bulgarian real estate market. However title insurance is not very common and quite difficult to acquire. In this respect title insurance is not commonly used as a protection against bad title.

To protect themselves the acquirers of property usually use a combination of title searches, legal opinions and title insurance.

Bulgarian legislation provides statutory priority for recorded instruments.

19 Structural and environmental 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 important legal issues to be taken into consideration upon conclusion of a lease agreement include the following:

- purpose of usage of the property;
- rental price and options for its indexations in case of long-term lease agreements;
- due date for payment of rent and issuance of invoices;
- deposit arrangements;
- term of contract and prolongation;
- methods of termination;
- condition of the real estate at conclusion;
- type of repairs and the party bearing the costs;
- sublease covenants; or
- registration of the lease agreement 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, brokerage agreements, utilities agreements, escrow agreements, etc.

22 Closing of transaction

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:

- draft of a notary deed;
- protocols of the general meeting of the shareholders and 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 property is the mortgage. There are two types of mortgages under 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. There is no difference between Bulgarian or foreign lenders under Bulgarian legislation.

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 Loan interest rates

How are interest rates on commercial and high-value property loans commonly set? 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 on commercial and high-value property loans is by reference to Euribor, LIBOR, etc.

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 on 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 Default and enforcement

How are remedies against a debtor in default 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 property 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

May 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 the 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 property.

In case of bankruptcy of the borrower, the lender has priority over the assets that serve as collateral – that is, the mortgaged property. 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.

Update and trends**Common Parts Management Act**

The new Common Parts Management Act entered into force on 1 May 2009 and regulates the management of common parts in buildings with numerous owners and respectively, the rights and obligations of the owners and inhabitants of these buildings. This regulation is expected to have enormous practical importance and effect on the management of properties in Bulgaria.

Discussion on payment of property price

A public discussion has been initiated concerning the introduction of a new procedure for payment of the purchase price of a property. The proposed procedure foresees that all payments are to be made to a bank account managed by a government institution responsible for money-laundering prevention. After origin of funds verification the purchase price shall be released to the seller. The discussion has not yet materialised into any draft legislation.

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 typically include personal guarantees (for example, given by the shareholders, parent-company, third parties, etc), promissory notes, special pledges on moveable property, special pledges on borrower's receivables, etc.

31 Loan covenants

What covenants are commonly required by the lender in loan documents? What is the difference depending on asset classes?

The substance of covenants commonly required by lenders in the loan documents includes:

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

32 Financial covenants

What are typical financial covenants required by lenders?

Usually financial acceptability is assessed before lenders decide to finance a real estate project. The main financial criteria can be divided into two main groups: reliability of the borrower and its capability to repay the loan; and amount and type of the collateral.

The borrower is usually obliged to notify the lender about any material changes in shareholders, any changes in its legal status, activities, etc. Lenders (usually banks) are allowed to request any information from the borrower in order to assess the level of the risk caused by the respective changes or events, and to assess the capability of the borrower to continue with the fulfilment of its financial obligations under the loan agreement.

Ongoing appraisals are still not very common.

33 Bankruptcy

Briefly describe the bankruptcy system in your jurisdiction.

Insolvency proceedings are commenced if a debtor is insolvent or over-indebted. 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 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 at 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 remain 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;
- 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 results in the debtor ceasing to exist as a legal entity.

34 Secured assets

What are the requirements for creation and perfection of a security interest in non-real property assets? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

Under Bulgarian law the most commonly used security interest in non-real property assets is the special pledge.

The agreement for establishment of the special pledge is concluded in writing. In certain cases depending of the asset that is pledged, signatures of the parties are to be certified by a notary officer. The special pledge is registered with the Register of Special Pledges.

A control agreement is not necessary to perfect a security.

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.

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