

THE REAL ESTATE
LAW REVIEW

TENTH EDITION

Editor
John Nevin

THE LAWREVIEWS

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TENTH EDITION

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PREFACE

Just as the ninth edition of *The Real Estate Law Review* was being published, the world was thrown into total confusion by the rapid spread of a deadly new disease. Covid-19 has affected the global economy like nothing this generation has experienced, with every major jurisdiction forced into a series of lockdowns. However, it must not be forgotten that the pandemic is primarily a human tragedy with more than 93 million cases globally and 2 million deaths. As we begin to see light at the end of the tunnel, the global health crisis will undoubtedly complete its transition into an economic one, with significant global debt and widespread unemployment. Covid-19 will leave its mark on all aspects of how we live and work, including each and every sector of the global real estate market.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012, but nothing more significant than the covid-19 pandemic, a truly global crisis. This tenth edition of *The Real Estate Law Review* will continue to prove its worth by providing readers with an invaluable overview of how key markets across the globe operate and how they react to major world events. Covid-19 has served as a stark reminder that it is no longer possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 27 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effect on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

In the year that the UK finally left the EU and Joe Biden became president of the United States, the significance of Brexit and American politics have been put into perspective by the covid-19 pandemic. Covid-19 is a truly global issue affecting every jurisdiction and, of course, its real estate market. In the background, and almost forgotten, Brexit and the associated economic and political fallout has continued to be a concern for the UK economy and its real estate markets. Although investment volumes fell off a cliff in the first half of the year, we have started to see interest from both overseas and domestic investors, underlining the continued importance of UK real estate as an investment asset. The world's cache of investment capital is likely to prompt a surge in investment activity once some degree of confidence returns. The UK, and London in particular, seem certain to remain attractive to overseas investors looking for a safe haven for their funds. The next few years will undoubtedly

be challenging as we begin the road to recovery, but opportunities will arise, and real estate will remain a key part of investment strategies.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this tenth edition of *The Real Estate Law Review*. I would also like to thank the members of the Law Review team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2021 and beyond.

John Nevin

Slaughter and May

London

February 2021

ROMANIA

Valentin Creața¹

I INTRODUCTION TO THE LEGAL FRAMEWORK

i Ownership of real estate

The Roman law system distinguishes between rights *in rem*, as rights over or in connection with real estate, and rights in personam, as personal rights on performance of obligations.

The ownership is a right *in rem* and grants its holder the full right to use and dispose of the real estate. The other rights *in rem* (i.e., superficies, usufruct, easements, *usus* and *habitatio*) grant their holders only part of the attributions of the full ownership.

The superficies right is of particular importance to investors and, starting with the New Civil Code (which entered into force as of 1 October 2011),² enjoys unitary regulation. The superficies right entitles its owner to erect and to own a building on a third party's land. The owner of the building obtains the right of use on the land. The superficies right can be obtained for free or for a fee and is available for a maximum of 99 years, with the possibility to be extended repeatedly.

The ownership may be public or private. Public ownership belongs solely to public entities (Romanian state, counties or localities) and operates on real estate regulated by law as being publicly owned. Private ownership may belong to public or private entities and operates on any other real estate than that which is subject to public ownership.

There are several forms of private ownership: (1) exclusive ownership – granting the free use and disposal of the real estate to a single entity; (2) co-ownership by share quotas – real estate owned by more entities on ownership quotas, usually as pro-rata shares; and (3) joint ownership – real estate owned by more entities without determining their quotas (usually in wedlock).

A recent institution under Romanian law is the fiduciary agreement,³ which creates the possibility for any person to transfer rights (including ownership) to one or more fiduciaries (e.g., credit institutions, investment companies, management companies, insurance companies), to exercise full prerogatives of such rights, for a specific purpose and period (not exceeding 33 years), for the benefit of one or more beneficiaries (constitutor, fiduciary or third person).

1 Valentin Creața is a partner at Popovici Nițu Stoica & Asociații. The author would like to thank the real estate development team, including Cristiana Blei and Cristina Tudor, for its valuable support.

2 Law 287/2009 on Civil Code.

3 The fiduciary institution is similar to trust under the Anglo-Saxon law system.

In Romania, there is no leasehold ownership. A lease is a right in personam and provides its holder only the personal right to use the property against the payment of rent during the contractual period.

ii Registration system

Romanian real estate is registered with the land registry operated by the National Agency for Cadastre and Land Registration. The land registry is publicly available, and ownership information can be obtained by requesting a land book excerpt. An online system for accessing the land registry services was recently implemented, and accelerated in 2020 owing to pandemic restraints.

The land book excerpt consists of three parts: (1) real estate description (surface, location and use type); (2) ownership information (owner, title and relevant documents); and (3) encumbrances (e.g., mortgages, easements, interdictions and litigations).

The registration of real estates with the land registry was given constitutive effect as of 1 October 2011. As a general rule, the rights *in rem* over real estate registered with the land book may only be transferred by registration with the land book, based on the valid title on the real estate. Likewise, rights *in rem* may be cancelled solely by removal from the land registry, based on their holder's written consent or a final judgment.

Nevertheless, this general rule shall only be implemented after completing the cadastral measurement formalities within each territorial unit, envisaged for the years to come.

Until then, all formalities with the land book registry have only an opposable effect, so failure to register real estate operations with the land book registry does not affect their validity, but deprives the parties from legal protection against third parties who are not bound to observe these operations.

iii Choice of law

Real estate transactions have to observe certain rules to be effective in Romania, such as authentication of the transfer deed by notary public, registration with the land book registry, price payment in local currency (for legal persons) and fiscal certificate attached.

Generally, parties to a transaction on real estate in Romania are free to choose the law applicable to the contractual matters, to the extent that the chosen law does not prejudice the Romanian legal provisions that cannot be exempted. Should the parties fail to choose a governing law, the Romanian law (*lex rei sitae*) will apply.

The aforementioned also applies when the parties are citizens of a European Union Member State.⁴

II OVERVIEW OF REAL ESTATE ACTIVITY

Romania, like other European countries, has been severely affected by the covid-19 pandemic (the pandemic) in 2020, in terms of economic growth. The Romanian GDP fell by 4.5 per cent in the first semester and was forecast to show another drop in the second semester. Real

⁴ Regulation (EC) 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I).

GDP is forecast to contract by 5.25 per cent in 2020 and to rebound by around 3.25 per cent in 2021.⁵ The general government deficit is forecast to increase to 10.25 per cent of GDP in 2020, from 4.3 per cent in 2019.

Private consumption has been severely affected by the pandemic (by a fall of 8.8 per cent) and should recover gradually in 2021, in line with the easing of social distancing measures. Net exports are expected to contribute negatively to growth in 2020.⁶

Investment is also projected to rebound, albeit in a muted fashion owing to spare capacity and persistent uncertainty. The total volume invested in commercial property in the first semester increased by 21 per cent (compared to the same period last year). Bucharest registered 90 per cent of investment volume in the first semester, reaching €410 million. The number of transactions in the second semester is expected to be close to the first semester, with a total annual investment volume over €700 million.

In the first semester, the most attractive was the office sector (85 per cent of total investment value), followed by the industrial sector (8 per cent). Romania has some of the most attractive yields in Europe (6.5 per cent) after Bulgaria, the prime yields in Bucharest being 7 per cent for the office sector, 6.75 per cent for retail and 8 per cent for the industrial sector.

The office sector is also the main actor in delivering new supply on the market. In the first nine months, Bucharest provided new office buildings of approximately 120,000m². If all of the announced projects are completed, approximately 40,000m² of new office buildings are expected to be delivered by the end of 2020.

Despite the extraordinary context of the pandemic, with only four project extensions delivered during the first three quarters of 2020 in the retail sector, the retail market continued the trend of recent years with many new entries such as NEST Miercurea Ciuc and Oradea, Dambovită Mall and Shopping City Targu Mures⁷ (the last three delivered by the end of the third quarter of 2020), while the e-commerce market continued to rapidly increase (estimated at 32 per cent).

In the first nine months, 250,000m² of industrial and logistic spaces were delivered, and by the end of 2020 the industrial and logistic spaces were expected to reach 5 million m².

Prime rents increased slightly in the first quarter, from €18.50 to €18.75 per m², while the vacancy rate was relatively steady – around 9.9 per cent for office spaces in Bucharest.⁸

5 https://ec.europa.eu/economy_finance/forecasts/2020/autumn/ecfin_forecast_autumn_2020_ro_en.pdf.

6 European Commission Communication regarding the fiscal situations in Romania (Brussels, 11 November 2020).

7 www.cbre.ro/en/research-and-reports/Romania-Retail-MarketView-Snapshot-Q3-2020.

8 www.romaniajournal.ro/business/cbre-q1-total-real-estate-investment-volume-in-romania-mounted-to-eur-120-9-m/.

III FOREIGN INVESTMENT

As of 1 January 2014, all restrictions imposed by Romanian law on land ownership by foreign individuals and legal entities from EU Member States were removed. Moreover, land acquisition by non-EU nationals is permitted subject to reciprocity,⁹ according to international treaties; however, non-EU nationals cannot acquire ownership of Romanian land in more favourable conditions than EU citizens.

Buildings are not subject to such restrictions and can be freely owned by foreign individuals and entities, to the extent that the relevant ownership is not also attached to a land quota.

It is common practice for foreign individuals and entities to indirectly acquire and hold real estate through special vehicles in the form of legal entities under Romanian company law.

Foreign investors benefit from national favourable treatment, have access to all sectors of the economy¹⁰ and are granted important benefits, such as the full repatriation of capital and profits obtained in Romania, full protection against expropriation and nationalisation, and access to incentives and funds provided by EU and Romanian legislation.

In the context of land market liberalisation, a new regulation was enacted in April 2014¹¹ providing a pre-emption right in favour of co-owners, lessees, neighbouring owners (irrespective of their nationality) and the Romanian state, in this order, at equal price and in equal conditions, in case of selling agricultural lands outside locality borders. This regulation was amended in August 2020 by Law 175/2020,¹² mainly referring to:

- a* new categories of pre-emptors¹³ for the acquisition of agricultural land outside the locality's borders and amendment of the preemption order;
- b* restrictive conditions precedent for the purchasers;¹⁴ and
- c* prohibition to transfer the agricultural land within eight years of purchase, subject to payment of 80 per cent tax for the positive difference value between the purchase and sale price.

9 The reciprocity principle states that foreign nationals are subject to the same restrictions related to real estate acquisitions as applied to Romanian nationals by their own country.

10 The main investment opportunities and key sectors in Romania are: automotive and car component production, aerospace, wood industry, energy and renewable energy, IT&C, infrastructure, agriculture, food industry, pharmaceuticals and healthcare, chemicals, fast-moving consumer goods (FMCG), tourism, real estate and construction and natural resources.

11 Law 17/2014 on certain measures to regulate the sale and purchase of agricultural lands located outside the locality's borders.

12 For the amendment of Law 17/2014 and Law 268/2001 regarding the privatisation of the commercial companies.

13 Category of pre-emptors, in this order: (1) co-owners, spouses, relatives and in-laws up to third degree; (2) owners of agricultural investments or lessees; (3) owners or lessees of the agricultural lands adjacent to the target land; (4) young farmers; (5) Academy of Agricultural and Forestry Sciences; (6) natural persons residing in the territorial units or neighbouring territorial units where the land is located; and (7) Romanian State through the State Domains Agency.

14 (1) residence in Romania for at least five years prior to the date of the sale offer; (2) carrying out 'agricultural activities' for five years prior to the date of the sale offer; (3) in case of legal persons, turnover of at least 75 per cent from 'agricultural activities', in the last five tax years prior to the sale offer.

IV STRUCTURING THE INVESTMENT

The acquisition of Romanian real estate is usually structured either as an asset deal (by which the real estate is purchased directly) or a share deal (by the acquisition of the shares of a Romanian company owning the targeted properties).

i Asset deal

The asset deal investment may be implemented either by simple acquisition of assets or as transfer of business (ongoing concern transfer). In this later case, the acquisition includes not only the property, but also the business attached to the respective asset (e.g., movable and immovable assets, agreements, employees, trademarks).

Through direct transfer of assets from the owner to the investor, the impact of the historical problems related to the title or to the vendor is diminished or even excluded.

This way, the acquirer:

- a* does not take over the fiscal exposures of the current owner and the obligations from the agreements that are not transferred to the investor (outside the transfer of business);
- b* secures a transfer of ownership in good faith and subject only to the land book registration rules;
- c* may register higher expenses with the fiscal depreciation than the vendor (as existing owner) and, to this end, the acquirer would register a reduced taxable profit and, implicitly, the income tax is lower; and
- d* may maintain certain authorisations (attached to the transferred assets) that do not lose their validity (e.g., fire-fighting permits). On the other hand, the other authorisations (e.g., operating permits) have to be obtained again by the investor.

The taxes attached to asset deal investments are higher than for share deals. The registration tax and the notary public's fee for contract's authentication amount up to 1 per cent of the transaction price.

The existing guarantees over the transaction and the assets provided by the original contractors remain in the vendor's patrimony (except for the legal guarantees), and the acquirer shall benefit only the guarantees provided by the vendor under the sale-purchase agreement (eviction and defects).

If the vendor is only a project company, there is a risk that it will no longer conduct business after the assets' transfer and it will be dissolved. In this case, it is recommended that the risk be covered through independent contractual guarantees provided by mother companies or by title insurance.

ii Share deal

The share deal consists of transferring the entity (usually a company) currently owning the real estate, by transferring the shares in the respective entity.

The most commonly used corporate structures are the joint stock company and the limited liability company.

The joint stock company is the most complex corporate structure, composed of a minimum of two shareholders, with a minimum share capital of €25,000, in Romanian lei equivalent, and complex management rules. This is the entity suited for the investors interested in capital-driven structures and the only type of company to be listed with the stock exchange.

The limited liability company (LLC) is a simpler corporate structure, which may be incorporated even by a single shareholder and up to maximum of 50 shareholders. LLC regulations were amended by Law 223/2020¹⁵ that eliminated the minimum value of the share capital (200 lei) and simplified the share transfers to third parties, which is no longer subject to the 30-day term for creditors' opposition.

In both corporate structures, the company's obligations are guaranteed with the company's patrimony, and the shareholders are liable only to the limit of their contribution to the share capital.

Another possible investment structure for an asset deal or share deal is the joint venture agreement. The participants bring together funds, assets or both, as contribution for developing a project, the ownership on the assets remaining in the participants' patrimony. The participants establish their rights and obligations in the agreement and appoint one of them as manager, representing the joint venture.

The joint venture does not imply the incorporation of a separate entity by its partners, so all the obligations shall be guaranteed by the participants with their contributions and their patrimony.

Although the authenticated form is only mandatory for asset deals, having an agreement concluded in authenticated form confers advantages on the investor when claiming the enforcement of contractual obligations.

In some cases, various formalities should be fulfilled for a valid transaction. For example, approvals for transferring special regime real estate (historical or archaeological monuments, protected areas), approvals from guarantors or persons holding specific rights on an asset (financial institutions, other creditors) and Competition Council clearance (if the transaction meets the Competition Law conditions on minimum turnover, change of control, etc.).

V REAL ESTATE OWNERSHIP

i Planning

The urbanism documentation has the main role in developing real estate projects, representing the outcome of land-plot planning and providing the general information on the possibility of erecting buildings on specific land.¹⁶ Hence, facilities may be developed on certain land provided that parameters established under the applicable territory planning and urbanism documentations are observed.

After confirmation that a building may be developed, the investor should obtain information on the land plot scope of use (economic regime) and on construction conditions (technical regime), based on the urbanism certificate.

The urbanism certificate also provides information on the approvals and permits necessary for a building permit but does not grant the right to build, this being established only by the building permit issued based on the formalities required under the urbanism certificate, the technical documentation of the building and the legal requirements.

The authorisation procedure is governed by Law 50/1991, which encompasses the entire legal process, from the urbanism certificate to the building permit.

15 Related to the simplification of the shares' transfer and amendment of Companies Law 31/1990.

16 Law 350/2001 on land planning and urbanism, as amended by Government Emergency Decision 51/2018.

Law 50/1991 was amended in 2019 by regulations impacting real estate development,¹⁷ by aiming to simplify and accelerate the authorisation procedure, namely: (1) reduction of the approvals/permits issuance terms; (2) obtaining the urbanism certificate in digital form; (3) enlarging the works allowed without a building permit; (4) issuing a single permit (with a single tax) for both demolition and construction for building a new construction after demolishing an old one.

Amendments in 2020¹⁸ provide for the registration with the land book of the buildings erected without a building permit (after the expiry of the statutes of limitation for penalising such contravention), based on:

- a* a certificate¹⁹ issued by the relevant municipality, ascertaining the construction of the building in compliance with the urban planning provisions;
- b* cadastral documentation; and
- c* a technical expertise confirming the observance of the construction quality requirements.

ii Environment

Irrespective of having a facility under development or a standing investment, the owner (including contractors, agents, tenants, employees) is bound to observe the environmental regulations.

These apply to any type of pollution (noise, land, water and air pollution, waste disposal and evacuation) and are related to all operational permits necessary for the development or exploitation of all facilities (e.g., fire-fighting, operating, environmental, health and security work, civil protection).

The real estate beneficiaries bear the liability for ensuring compliance with the environment protection laws, which, depending on the outcome of the breach, may be administrative, civil or criminal liability.

iii Tax

All asset owners owe local taxes on land and buildings. Exemptions may be available if the buildings serve a public or social interest.

The land tax is determined on: (1) surface; (2) location (e.g., inside or outside the locality's borders); and (3) use category (e.g., constructions, agricultural), as all such are established by the local authorities.

The tax on buildings is determined by the building category, namely 0.08–0.2 per cent of the fiscal value of the residential buildings, 0.2–1.3 per cent on non-residential buildings and 0.4 per cent on agricultural buildings. The fiscal value of the buildings must be updated every three years by valuation. Otherwise, the applicable quota of local tax is 5 per cent.

For transfers, taxes vary depending on the transaction structure. In a share deal, the stake seller owes the corporate income tax, which is of 16 per cent²⁰ of the capital gain (reduced to zero if the shareholder is a company owning more than 10 per cent of the shares

17 Law 193/2019 regarding the amendment of Law 50/1991 regarding the authorisation of the execution of the construction works.

18 Law 7/2020 for the amendment of Law 10/1995 regarding the quality in constructions and amendment of Law 50/1991.

19 This certificate replaces the building permit.

20 The microenterprise taxation regime applicable for certain companies has not been considered.

for minimum one year, subject to additional conditions), or the personal income tax of 10 per cent.²¹ For foreign nationals, additional benefits may be available under the conventions for the avoidance of double taxation.

In asset deals, 16 per cent corporate income tax²² applies on the profit, except for natural persons, for which the tax is 3 per cent of the taxable income. As per the new fiscal regulations,²³ natural persons are exempt from taxation in asset deals lower than approximately €92,000, in Romanian lei equivalent (referred to as 'non-taxable amount'), the 3 per cent being applicable to the difference between the transfer price and the non-taxable amount.

A reverse taxation mechanism is applicable to constructions and lands whose transfer is subject to VAT, which applies if both seller and buyer are registered for VAT purposes in Romania. Otherwise, the normal VAT system applies.

If the land is not for construction purposes, the transfer is VAT exempt (with no deduction right). VAT exemptions also apply to transfer of buildings, except for the new buildings.

For all real-estate transactions where an exemption applies, the seller can opt to levy VAT, based on prior notification of the tax authorities.

Recent amendments entering into force on 1 January 2021²⁴ increased the threshold from 450,000 lei (approximately €100,000) to €140,000, excluding VAT, for the acquisition by natural persons of living areas with usable area less than 120m² (excluding household annexes but including the building's land). For such acquisitions, a reduced 5 per cent VAT is applicable.

iv Finance and security

The acquisition of real estate either through asset deals or share deals is most commonly financed by banks. The foremost securities are the mortgages, which may be established over immovable assets, owner's shares and certain present and future rights attached to the property (e.g., rent, indemnities, bank accounts).

The mortgages established over the immovable assets are valid if the relevant agreement is concluded in authenticated form before the public notary and become effective as of their registration with the land book registry, and regularly, go along with interdictions to transfer the asset, to build or to implement any other operation that might affect the property (e.g., partitioning, consolidation, lease, easements).

The mortgage agreement validly concluded and registered with the land book registry or the Electronic Archive for Security Interests in Movable Property represents enforceable title. Thus, the enforcement procedure of the corresponding security is simplified and the court intervention for establishing the enforceability of a mortgage is not necessary.

21 Personal income tax was reduced from 16 to 10 per cent as of 1 January 2018, according to Government Emergency Decision 79/2017.

22 A microenterprise taxation regime applicable for certain companies has not been considered.

23 Government Emergency Decision 3/2017 for amendment of the Fiscal Code, approved by Law 177/2017.

24 Law 248/2020 regarding amendment of Article 291 of the Fiscal Code.

v Fire safety requirements

Certain constructions²⁵ (e.g., high and very high buildings, office and commercial buildings or exceeding 600m², as well as buildings for cultural or touristic activities) are subject to fire safety authorisation. The authorisation has to be obtained prior to the commencement of any construction, and the person bound to obtain it is either the investor or the beneficiary of the investment.

The fire safety authorisation is issued after submitting technical documentation (containing fire safety scenarios, fire safety notices, evacuation plans, etc.) and is valid as long as the conditions met at its issuance are fulfilled and no changes are made to the building. The lack of authorisation triggers administrative fines, but in the event of major breach of fire safety requirements (irrespective of the existence of the authorisation) the authorities may stop the building operation. Moreover, criminal liability may be a factor if a fire causes bodily injury or death.

vi Completion of the project

Romanian law regulates the reception of construction works, certifying the fulfilment of the construction works and the construction takeover by the investor.

The reception regulations were significantly amended in 2017,²⁶ implementing new elements such as partial reception (allowing the building reception on execution stages, before completion), new structure of the reception committee (mandatorily involving multiple local authorities), new force of the reception committee's decision (becoming compulsory for the investor) and simplification of the reception options (the reception may only be admitted or rejected).

Recent Law 7/2020²⁷ provides new obligations for owners and investors related to the handing-over process, the building being commissioned and ready for use only after the completion of the reception procedure, which includes:

reception of the construction works; and

reception of the utilities connection works and commissioning the utilities (provided the building is connected to public utilities networks).

VI LEASES OF BUSINESS PREMISES

i Features of lease agreements

The lease of all premises is governed by the New Civil Code.

The lease agreement signed by the parties and registered with the fiscal authorities or authenticated by a notary public represents enforceable title as regards the payment of rent and the obligation to return the premises (upon the term expiry or following the expiry of a notice period), respectively the evacuation of the tenant. Thus, the landlord is exempted from additional formalities and expenses and may directly initiate the enforcement procedure for failure by the tenant to observe these obligations.

25 Government Decision 571/2016 for approval of the categories of buildings and fittings out subject to fire safety approval or authorisation, Law 307/2006 on fire protection, as amended by Law 28/2018.

26 Government Decision 343/2017 regarding the approval of the regulation for the reception of construction works and related installations.

27 For the amendment of Law 10/1995 and Law 50/1991.

ii Duration and the right of renewal

The lease period may be determined by the parties. Should the parties not provide the lease term, the lease is considered concluded for one year. In all cases, the lease agreement may be concluded for a maximum of 49 years. The longer lease term shall be *de jure* reduced to 49 years. The lease agreement ceases on the expiry date of the lease term, when determined, or upon the request of any party through unilateral termination, with the observance of a notice period, in case the duration was not determined.

Romanian law provides the prolongation by tacit renewal: if the tenant continues to execute the lease agreement following the term expiry without any opposition of the landlord, a new lease is considered to be concluded, under the same conditions, including the guarantees. However, the new lease term shall be undetermined.

As standard practice, the parties include renewal provisions in the lease agreements, not leaving these aspects to fall under the legal standard renewal clause.

iii Repair works and related costs

As general rule, in the absence of an alternative parties' agreement, regular repairs resulting from normal wear and tear are the tenant's responsibility and repairs relating to the building's structure and common areas are the landlord's responsibility.

Insurance of the building is usually the landlord's responsibility, but a share of its value may be included in the service charges owed by the tenant. The tenant may be obligated to conclude certain insurances related to the rented space and its activity (civil liability insurance against third-party claims, insurance against damage and loss of furniture, equipment).

iv Service charge

Usually, in addition to rent and other costs, a tenant of commercial premises (office, retail, logistic) may be obligated to pay service charges as part of the aggregate expenditures incurred by the landlord in respect of all the expenses regarding the building (utilities for common areas, managements fees, insurance premiums, property taxes).

v Subletting and assignment of rights

According to the New Civil Code, the tenant is entitled to sublease the premises or to assign its rights on the premises, if that is not expressly forbidden in the agreement.

Similarly, unless otherwise stipulated in the agreement, the lessor is entitled to assign its rights from the lease agreement without the consent of the tenant.

vi The rent

The rent may be freely established by the parties, either globally or fixed on time units. No rent control exists in the private sector. Should the parties fail to establish the payment terms, it shall be paid: (1) in advance, if the lease term is under one month; (2) on the first business day of each month, if the lease term is between one month and one year; or (3) on the first business day of each quarter, if the lease term is at least one year.

Certain facilities were approved in 2020 in the context of the pandemic, including:

- a* rent postponement during state of emergency, due to disruption of business activity;
- b* payment deferrals for ongoing utilities and lease agreements concluded before the state of emergency; and
- c* tax incentives for the landlords, in the case of rent reductions granted to tenants.

Some measures are applicable until the end of 2020 (e.g., rent postponement, tax incentives).

Rent is generally calculated on the basis of the premises' area and may be subject to VAT.

As standard practice for the lease of premises in commercial centres, the financial obligations of the tenant comprise: (1) minimum guaranteed rent established in €/m²; (2) turnover rent established as percentage for certain period (usually per year) of the net total turnover achieved by the tenant in connection with the premises, which is payable if it is higher than the prepaid minimum guaranteed rent; and (3) operating costs including common operating costs, marketing costs and own operating costs (utilities), measured either by independent consumption metres or by engineered value.

vii Tenant's liability

The leases for commercial premises are usually executed in favour of the landlord (excepting the cases of anchor tenants, with a strong market position and negotiation power) and, therefore, all matters of the tenant's liability and financial obligations are strictly regulated under such agreements.

Regularly, the tenant is financial liable for early termination of the agreement (save for the termination by landlord's fault), being compelled to pay the rent and related costs calculated until the end of the lease period or until the premises are leased to a new tenant at similar rent level.

Usually, the tenant obtains at its own cost the permits and authorisations necessary for the premises' use and related renovation works. The tenant's renovation works are usually not to be reimbursed to the tenant, except for the lease termination by landlord's fault.

Generally, the tenant assumes any risk of damage caused in or to the premises and is liable for the alteration and degradation of the premises, including in the case of fire, to the extent he or she cannot prove the *force majeure* or fortuity cases.

Also, the tenant is liable to observe (and take appropriate measures to limit and prevent) the general fire protection regulations,²⁸ applicable for office or retail premises.

viii Security of tenure

There are no mandatory provisions regarding the guarantees the tenant must provide to the landlord to secure the tenure.

In practice, the tenant provides either a deposit or a letter of bank guarantee, valid throughout the lease period, for a value generally amounting to three months' rent and operating costs.

The parties may also agree for the tenant to provide a parent company guarantee (e.g., corporate guarantee, comfort letter), unconditionally securing the performance of the tenant's obligations.

28 Law 307/2006 on fire protection, as amended by Law 28/2018, and Order 712/2005, as amended by Order 786/2005 and Order 187/2010 issued by the Ministry of Administration and Interior Affairs.

VII DEVELOPMENTS IN PRACTICE

i Law 77/2016

In 2016, Law 77/2016 was enacted on the discharge of mortgage-backed debts through transfer of title over immovable property, granting the consumers in a non-performing loan under €250,000 the possibility to give back the residential property to the bank if they cannot return the loan and if the impossibility of repaying the loan is because of unpredictable causes (e.g., financial crisis, exchange rate).

Banks have reacted to this law, increasing the initial contribution of the borrower in a normal mortgage agreement from 15 per cent up to 25–35 per cent, depending on the bank.

The initial trend to give back properties was diminished by a Constitutional Court Decision²⁹ stating that not all non-performing loans are subject to this measure and the applicability of the law has to be investigated from case to case. This decision has also had an impact on the banking conditions for granting a loan, because some of the banks have revised the conditions for the initial contribution mentioned above, again applying a limit of only 15 per cent.

Additional amendments were enacted in 2020, mostly regarding the clarification of hardship situations when the give-back mechanism may be applied. In this respect, (1) the minimum depreciation of the local currency by 52.6 per cent and (2) the increase of the monthly payment obligation by 50 per cent have been indicated as foreign exchange evolution that can be considered hardship, allowing the debtor to apply the give-back mechanism, transferring the property to the bank with no further obligations.

ii ‘New Home’ programme and limitation of indebtedness

The ‘First Home’ governmental programme launched in 2009 was renamed and amended in 2020 into the ‘New Home’ programme, the regulations including relevant implications of the pandemic.

One of the main amendments is the increase of the threshold for credit loans from €70,000 to €140,000.

The programme was an effective measure during the economic recession, but is currently following a deceleration strategy.³⁰ In this regard, the programme benefited from a decreasing guarantee value over the years, which was limited to only 2 billion lei per year since 2018.³¹

The real estate transactions with natural persons were limited from 1 January 2019,³² as the National Bank of Romania established the indebtedness level for loans from banks and non-banking financial institutions to 40 per cent (except for first-home buyers, for which the ratio may be of 45 per cent) for the first time since 2007. These limitations will not apply to (1) refinancing of credits contracted before 2019 and (2) new consumption and

29 Decision 623/2016 of the Constitutional Court.

30 On 29 November 2016, the Romanian government signed the deceleration strategy of the ‘First Home’ Programme for 2017–2020.

31 Government Decision 717/2009 for regarding the implementing rules for ‘First Home’ governmental programme.

32 National Bank of Romania Regulation 6/2018 for amendment of Regulation 17/2012 on lending conditions.

real estate investment loans that are granted in each quarter up to a maximum 15 per cent of the volume of consumption or real estate investment loans granted by the borrower in the previous quarter.

iii The new Fiscal Code

The real estate market continues to be subject to legal changes that might have significant consequences.

The Fiscal Code applicable since 1 January 2016 reduced the standard VAT rate from 24 per cent to 20 per cent for 2016 and, respectively, to 19 per cent for 2017. Substantial amendments of the fiscal regulations were approved in 2018 (not less than 14 government decisions and laws being enacted), mainly for (1) reducing the personal income tax from 16 to 10 per cent; (2) increasing the threshold for the companies' microenterprises regime from €500,000 to €1 million; and (3) new thin capitalisation mechanism rules.

The Fiscal Code was amended several times in 2020 (mostly owing to pandemic fiscal incentives) and significant amendments are expected to occur in 2021.

A significant fiscal measure that was applicable from 2018 was the VAT split payment, which implies the operation of a separate bank account for VAT payment, in all transactions subject to VAT; however, the mechanism was repealed as of 1 February 2020.

iv Other relevant aspects

A new package of laws on public procurement was adopted in 2016, initiating changes aimed to simplify the process and to create better communication between the public and private sector and more transparency.

The national strategy³³ for public procurement contains the obligation to implement FIDIC standards within the public procurement agreements to unify the contractual arrangements, but it has recently been announced that such agreements may differ from FIDIC standards, so we may expect some changes in this field.

VIII OUTLOOK AND CONCLUSIONS

According to an economic forecast published by the European Commission,³⁴ Romania is estimated to have had an economic decline in 2020 of 5.2 per cent. Although the contraction in 2020 appears less severe than initially expected, uncertainty remains very high given the recent evolution of the pandemic and real output is not set to return to pre-crisis levels before the end of 2022.

The budget deficit is projected to increase significantly as the fiscal effort required to fight the crisis is larger than past fiscal slippages, according to the EU financial forecast.

Although the legal system may raise concerns about stability perspectives and the duration of court proceedings is rather long, significant steps have been made in fighting corruption, with Romania receiving positive assessments in this respect.

33 The adoption of such strategy was assumed within the Romanian Partnership Agreement for the 2014–2020 Programming Period.

34 https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-performance-country/romania/economic-forecast-romania_en.

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