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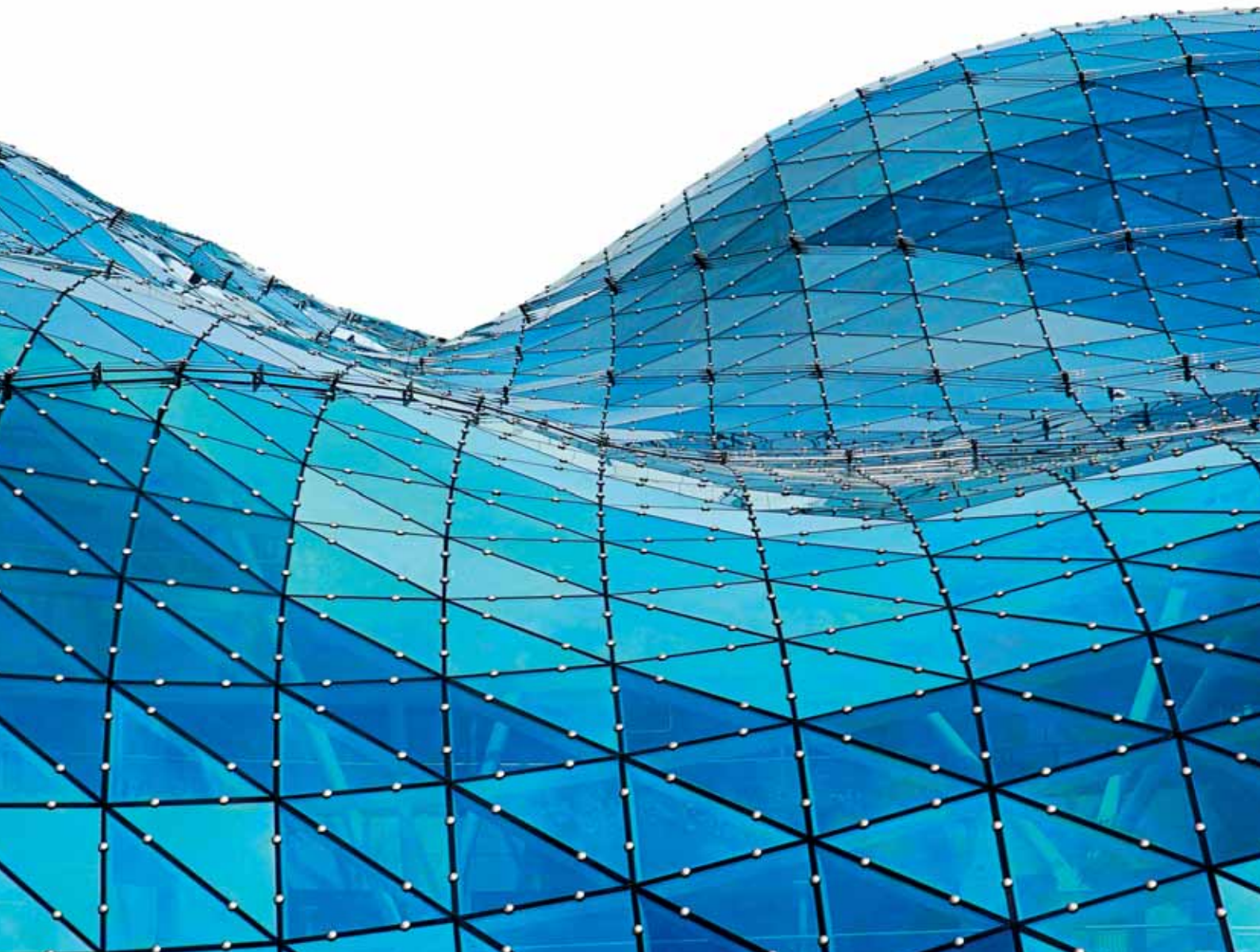
CEE Property Today

Legal trends and developments affecting the real estate sector in Central and Eastern Europe



Contents

Welcome

We are delighted to welcome you to the third edition of our real estate focused publication – CEE Property Today – in which we look at some of the legal trends and developments that affect the property sector in key Central and Eastern European (CEE) markets.

The real estate market has enjoyed significant activity across CEE over the past few months following successful realisation of promising projects by key market players. Poland and the Czech Republic remain the strongest markets in the region, with a positive outlook for Romania, Slovakia and Hungary. Central and Eastern Europe continues to offer solid prospects for further investments in the sector, particularly across logistics and retail.

In addition to fast moving market conditions, legislative developments continue to play an important role in the region. CEE Property Today highlights some of the key legal issues that have shaped the real estate sector in the past year and that continue to be very relevant going forward.

Some of the legislative developments, particularly those related to new Civil Code regulation, have resulted in changes in asset management strategies deployed by landlords. Other changes imposed by governments put more pressure on sellers' liability in disposing of assets. There also are on-going discussions on non-nationals acquiring agricultural land which continues to be a challenge for those seeking to expand their business in selected CEE countries.

We trust that these and other topics that we look at in this year's edition are of interest to you. Please do get in touch if you would like to receive more information on any of these topics or on any other legal issues affecting your business in Central and Eastern Europe.

Wojciech Koczara
Partner, Head of CEE Real Estate & Construction
T +48 22 520 8320
E wojciech.koczara@cms-cmck.com

July 2015

Update on the Bulgarian property sector

New sanctions for foreign companies owning agricultural land

From 1 May 2015, foreign companies face financial sanctions for directly or indirectly owning agricultural land in breach of restrictions introduced in May 2014. The sanctions apply even if the land was acquired before foreign ownership became prohibited.

The 2014 changes to the Ownership and Use of Agricultural Land Act prohibit the acquisition of ownership of agricultural land by:

— commercial companies directly or indirectly owned by companies registered in jurisdictions with preferential tax regimes (as listed in Para 1, s.64 of the Supplemental Provisions of the Corporate Income Taxation Act);

— commercial companies wholly or partly owned by shareholders or members from non-EU/EEA states; or

— joint-stock companies with bearer shares.

The above does not apply for public joint-stock companies and companies for collective investments. The restrictions do not affect ownership of forestry land, which is regulated by a different law.

From 1 October 2015, companies owning agricultural land in breach of the restrictions are liable to an initial fine of BGN 100 (c. €51) for each decare (1,000m^2) of land. The penalty is tripled if the owner does not dispose of the land within three months of the sanction date. The wording of the law suggests that this is supposed to be a further BGN 300 (c. €153) per decare rather than a tripling of the sanction already imposed.

The triple penalty rule also applies to 'each subsequent breach'. Although the meaning is not entirely clear, we believe that the company in breach would have to pay the same tripled sanction again every quarter until the breach is corrected. It is also unclear which authority is responsible for enforcing restrictions and imposing sanctions. Given these ambiguities, it remains to be seen precisely how the changes will affect the agricultural and property sectors.

Extension of moratorium on acquisition of private state or municipal land by prescription

Prescription periods impose a time limit by which legal proceedings must be instituted to enforce a claim or right once it has arisen. State and municipal ownership of land and real estate assets can be either public or private, but only land or real estate assets in private state or municipal ownership may be acquired by prescription (ie by the lapsing of the time limit, under the Ownership Act, State Gazette Issue No. 92 dated 16 November 1952, as amended).

"It is also unclear which authority is responsible for enforcing restrictions and imposing sanctions"

The prescription period for acquiring immovable property is 10 years. However, the prescription period for acquiring private state or municipal land was suspended for the first time (the day before it was due to expire) in 2006, and this was extended several times. It was due to resume from 1 January 2015 but the suspension was then extended for a further three years (to 31 December 2017). The rationale for doing this – explained in the reasoning of the amendment – was to allow the state and municipalities sufficient time to issue ownership deeds for any state or municipal land that lacked them and so prevent them from being acquired by third parties by prescription. The amendment gives the Council of Ministers until 30 June 2015 to provide Parliament with a plan setting out how the state and municipal bodies propose to meet the new deadline.

Changes to Real Estate Registry Regulations

Recent changes to the Real Estate Registry Regulations (State Gazette Issue No. 92 dated 7 November 2014) are intended to improve and simplify the function of the register. These include the introduction of a simpler registration procedure, by removing the requirement to provide cadastral drawings when registering documents such as statements of claim and court orders made on them, the renewal or deletion of mortgages and attachments.

Authors:

Jenia Dimitrova
T +359 2 923 4853
E jenia.dimitrova@cms-cmck.com

Denitsa Dudevska
T +359 2 923 4863
E denitsa.dudevska@cms-cmck.com

Increased protection for rightful property owners in the Czech Republic

New Real Estate Register

Last year the New Civil Code introduced significant changes to real estate in the Czech Republic, including changes in title to land, building rights and lease agreements. The new legal framework has also affected the day-to-day operation of the Real Estate Register. A New Cadastral Act has been adopted to unify the rules that govern the operation of the Real Estate Register and to adapt it to the New Civil Code regime. This article provides a summary of the most significant changes to the Real Estate Register which you will likely encounter when transacting real estate related business in the Czech Republic.

Material publicity

A new rule regarding material publicity, which came into force on 1 January 2015, has fundamentally changed property registrations. Until the end of 2014, registration in the Real Estate Register did not guarantee title to a property. If a registration was inconsistent with the factual reality, the latter prevailed regardless of the good faith of those relying on the registration in question.

From 1 January 2015, this rule has been reversed so that the registered state of the property takes precedence over the factual reality. Under the new rule, if you acquire a property in good faith (which is presumed, although this presumption can be rebutted), for consideration and from an owner who has registered the property in question, you will become the new owner of the property even if the registration is incorrect (subject to certain limited time period control mechanisms described below). The principle described above is the so called material publicity principle.

Increased protection

To counter some unintended and potentially harsh effects of the material publicity principle that could occur, the New Civil Code sets out a mechanism to protect owners from unlawful property registrations. Anyone affected by the registration of an interest that has no legal grounds may seek the deletion of such a registration before the court, subject to certain time limits. Within one month of being duly notified, such a person may request that a notice of the dispute (in Czech, *poznámka spornosti*) is made in the Real Estate Register. In cases where proper notification did not occur, the period for registration of notice of dispute is extended to three years. This will have the effect of precluding good faith in the disputed registration. This rule became effective as of January 2015.

Thorough notification

In order for the aforementioned protection mechanism to function effectively, all affected parties must be duly notified in respect of any dispositions of their property. For this reason, the Real Estate Register will notify all affected parties about any submissions and registrations relating to their property. The parties involved will be notified directly, even where they are represented by a proxy, in order to avoid fraudulent transfers under

"It would be prudent for real estate owners to check the information registered in the Real Estate Register regarding their property at least every three years"

falsified powers of attorney. In addition, there must be a waiting period of at least 20 days between the submission and the registration to allow for any necessary action to be taken by the parties involved. Nevertheless, it would be prudent for real estate owners to check the information registered in the Real Estate Register regarding their property at least every three years (preferably every year) so that the owners may bring a timely request for a note of dispute in case any undesirable information gets registered without their knowledge or consent.

Impact on due diligence

The changes summarised above will impact how a title review will be performed. The prevailing opinion of real estate professionals is that where real property was acquired prior to 2015, it is necessary to review the chain of titles going back at least ten years (the 'prescription period'). If real property was obtained after 1 January 2015, only the latest acquisition title will need to be reviewed, subject to obtaining a confirmation that all affected parties were properly notified by the Real Estate Register. However, where such a confirmation cannot be obtained, it is advisable to review acquisition titles for the past three years.

Technical changes

— All rights in *rem* can now be registered by a deposition (in Czech, *vklad*), regardless of the means of their creation, i.e. not only rights in *rem* created by agreements, but also those of other means of creation, which used to be registered in the form of a record (in Czech, *záznam*).

— A submission shall still be filed in a prescribed form, one counterpart of an acquisition title shall be provided in hard-copy or electronically and a procedural power of attorney shall be accompanied by an officially verified signature.

— The Real Estate Register will now contain information on purchase prices, which will allow statistical data on purchase prices to be collected.

— The informative value of the Real Estate Register has generally increased; it currently registers 15 new rights in *rem* and 19 new types of notes, leases and tenures (in Czech, *pachty*). Amongst the newly registered rights in *rem*, there is, for example, a building right, a reservation of the right to buy/sell back, or a waiver of damages on the land.

— Leases may now be registered in the Real Estate Register; either the owner or the tenant with the owner's consent may file for registration of the lease.

— The registration in the Real Estate Register takes significantly longer to process due to the changes introduced by the New Civil Code, particularly in relation to the new rule regarding the mandatory 20 day waiting period between submission and registration and the large number of new registered rights.

Authors:

Lucie Kislerová
T +420 296 798 782
E lucie.kislerova@cms-cmck.com

Petr Korál
T +420 296 798 859
E petr.koral@cms-cmck.com

Real estate aspects of the new Civil Code implemented in Hungary

As of 15 March 2014, some important changes were introduced as part of the new Civil Code for real estate, although overall property law has remained relatively stable compared to the extent of reforms taking place in other areas of law.

Superstructures and land use rights

The new Civil Code allows more flexibility for separate registration of buildings and the land on which they are erected; this is now allowed at any time, rather than (as before) only before construction of the building. The decision to separate the registrations may now be taken at any time by the land owner. This has several advantages, the most important of which is the increased scope for multifunctional development where buildings with different functions can be alienated to different investors separately from each other and the land.

Where the land and building are owned separately, the building owner is entitled by law to use the land to the extent required for normal use of the building. The land and building owners may enter into an agreement to regulate their rights and obligations regarding use of the land, which must be submitted to the land registry. The land use agreement, once properly filed with the land register, will also be binding on all future owners of the land and building.

New land registry rules

New land registry rules were introduced into the new Civil Code (by Act CXLI of 1997 on Real Estate Registration) limiting the right to bring an action to cancel registered rights due to an invalid or incorrect registration to the period ending six month after the date of receiving the real estate register's resolution on the invalid registration.

This protection is only available to a registered rights holder who acquired the right in good faith, for consideration, relying on the accurateness of the land registry, from a predecessor whose registration proved to be void, but not to the rights holder who acquired title himself on the basis of a void registration. The protection was previously available three years after the effective date of an entry based on void documents. Where the real estate register's resolution has not been delivered, the three-year deadline for cancellation action remains in place.

"Another important change under the new Civil Code affects transfers of leased property to a new owner"

Lease agreements

Another important change under the new Civil Code affects transfers of leased property to a new owner, making both new and former owner jointly and severally liable to the tenants for the landlord's obligations under the lease agreement. As previously, the landlord's rights and obligations under the lease agreement do not change when the leased property is transferred to a new owner after a lease agreement had been concluded.

Another change is that all securities (such as security deposits and bank guarantees) under the lease agreement will cease to exist upon transfer to the new landlord.

It is expected that law firms representing landlords will try to insert clauses into new lease agreements to exclude the joint and several liability of the former and new landlord and to ensure that the securities provided by lease agreements survive any transfer and can still be executed by the new landlord.

Lapse of warranty claims

The new Civil Code allows warranty claims to be made (as a general rule) within one year from the date of performance, (for consumer contracts) within two years and (for real estate agreements) five years. Where someone has an excusable reason for not being able to enforce their warranty claim within the relevant time limit (such as the defect being hidden), the claim will remain enforceable for one year after the excusable reason ceases to apply.

The new Civil Code removes the preclusive (objective) deadlines for statutory warranty claims contained in the old Civil Code resulting in a potentially unlimited warranty liability for hidden defects in buildings. In addition to warranty claims, stricter compulsory guarantee obligations remain effective under separate legislation for residential buildings and certain special superstructures.

Other important changes to property law

On 1 May 2014, Act CXXII of 2013 on the transfer of agricultural lands came fully into force, introducing stricter rules than previously on the acquisition of agricultural lands and also introducing a formal approval procedure by the competent real estate register for transfers of agricultural land and for the establishment of use rights related to agricultural land.

Author:

Gábor Czike
T +36 1 483 4819
E gabor.czike@cms-cmck.com

Real Estate M&A – more pressure on sellers' liability in Poland

Extended regulation of the statutory warranty in the Polish Civil Code

Increasing shift in protection towards the buyers' market in Poland

Real estate sellers remain liable for 5 (instead of 3) years following a sale

Warranty extended beyond buildings to land and (business and private) premises

More flexibility for buyers to withdraw from purchases due to major property defects

More protection has been given to real estate buyers in the form of increased regulation of statutory warranties. This change came into force for contracts concluded on or after 25 December 2014 as part of a major overhaul of the Civil Code.

The changes are aimed at unifying the rules on sellers' liability for defects in goods sold to business clients and consumers, implementing EU directives on consumer protection rights and consumer sales contracts into Polish law.

Broader definition of sellers' liabilities

Under the new rules, there are new and more precise definitions of defects for which the seller is liable. Defects, including those relating to real estate, can be physical or legal in nature.

A physical defect must involve an inconsistency between the physical features of the subject of a contract and the contractual requirements (for example, it is not suitable for the buyer's purpose as notified to the seller in the contract). It may also arise as a result of an incorrect installation or commissioning of a product performed either by the seller (or his agent) or by the buyer (following instructions given by the seller).

Legal defects in property include a restriction in its use by the relevant authorities and an encumbrance (such as a financial pledge) limiting the owner's right to dispose of it. Other situations amounting to a legal defect are also defined by law.

The changes widen the definitions of both legal and physical defects, putting more pressure on sellers by extending liability to a broader range of situations.

Extended statutory warranty period

The statutory warranty period has been extended to 2 years (previously 1 year) and, when buying real estate, to 5 years (previously 3 years). The warranty period starts from the date of delivery of the subject of the contract to the buyer. In B2B relations, the statutory warranty can be limited or excluded.

"The changes widen the definitions of both legal and physical defects, putting more pressure on sellers by extending liability to a broader range of situations"

Protection under statutory warranty is now extended to all properties, covering defects to land, buildings and (both business and private) premises. This replaces a longer statutory warranty period covering only buildings, but not other types of properties. The new protection is therefore good news for anyone thinking about acquiring real estate in Poland.

Claims under statutory warranty

If a defect is found, the buyer can withdraw from the contract or seek a price reduction, unless the seller immediately repairs or replaces whatever is defective. However, the seller can only repair or replace this once. If a defect recurs, the buyer is entitled to withdraw from the contract completely or to seek a further price reduction. Where the defect is minor, the buyer cannot withdraw from the contract. The buyer's claim expires one year after the defect was noticed.

Sellers' recourse against previous sellers

If a seller suffers loss as a result of a consumer exercising rights under the statutory warranty, the seller is entitled to recover that loss from the previous seller, including reimbursement of necessary expenses, the amount of any price reduction, and any lost profits. This principle of liability may not be excluded or limited.

Relationship between warranties and guarantees

The changes also clarify the relationship between a statutory warranty and a guarantee. The exercise of rights under a guarantee does not affect the statutory warranty. However, if a claim is made under a guarantee, the period for exercising claims under the statutory warranty is suspended from the date the seller is notified of the defect. It starts running again if the seller refuses or fails to comply with his obligations under the guarantee (from the date of refusal or expiry of the period for compliance).

Impact on current best practice

The extension of the statutory warranty period and of the scope of properties covered by it may lead to an increase in market prices and also reduce the widespread market practice of agreeing extended warranty periods for buildings in sale contracts. Thus the effects of imposing greater liability on sellers are likely to be far-reaching and to have an impact on best practice in the Polish real estate market.

As the changes will also affect specific work contracts and construction contracts, they should also be borne in mind when embarking on development projects and M&A transactions.

Authors:

Lidia Dziurzyńska-Leipert
T +48 22 520 5659
E lidia.dziurzynska-leipert@cms-cmck.com

Patrycja Pasińska
T +48 22 520 8464
E patrycja.pasinska@cms-cmck.com

Significant real estate industry developments in Romania

Favourable changes to tax on special structures

The tax on special structures has provoked lively debate ever since it was imposed on businesses in January 2014. This article considers the most important developments in that period.

Rationale

The objective was to impose an annual property tax on structures and assimilated assets other than buildings, complementing the existing tax on buildings. It was initially set at 1.5% of the gross book value of qualifying assets at the end of the previous year. However, it has been highly controversial, particularly for the fiscal burden it imposed on energy and telecom business investors, which they felt was unreasonable.

Reduction in rate

The rate of tax was reduced from the start of 2015 from 1.5% to 1%, following an overwhelmingly negative response to the tax by the business community and widespread public debate. Parliament's response was to adopt Law 11/2015 signalling a change of approach: as well as introducing a rate reduction, it also introduced additional exemptions. Key among these are:

— the exemption for reconstruction, upgrade, consolidation or extensions works to rented buildings made by the lessee: this is particularly beneficial for businesses with large retail networks such as banks and retail stores. Not only were a lessee's improvements to rented buildings formerly subject to the special structures tax but they were also deemed to increase the value of the building (and thus the owner's tax base for building tax purposes). This was regarded as a form of double taxation and as creating on-going costs for owners.

— the exemption for construction works outside Romania, including those in the contiguous zone and the exclusive economic zone: this is particularly beneficial for oil & gas companies, which have offshore constructions of significant value for exploration and exploitation activities.

"We recommend the use of contractual provisions to mitigate the risk of creating overlapping rights of use over the same plot"

Simplified procedure for acquiring land rights – oil & gas

Changes simplifying the processes by which land rights can be acquired and authorisation gained to conduct geological prospecting, exploration or exploitation works for oil and natural gas were introduced by Government emergency ordinance 22/2014 dated 14 May 2014 (amending construction law no. 50/1991).

Land registration

This change removes the significant problem often faced by oil & gas businesses that the land they wanted to acquire rights of use for exploration or exploitation did not have cadastral measurements in place and was not registered with the Land Registry. This made it impossible to start the permit procedure until the land had been measured and properly registered, both of which were costly and time-consuming.

The change allows the permit application process to be initiated for non-registered land plots using only existing criteria, such as plot and parcel number, without requiring the cadastral and Land Registry numbers to be provided.

Title to land

This change removes the requirement for building permit applications for oil & gas operations to evidence their right to use land by means of a notarised deed and registration thereof in the Land Registry. All that is now required is a simple, non-registered land use agreement containing certain prescribed content, and express consent from the owner to construction works being carried out for geological prospecting, exploration or exploitation of oil and natural gas.

Potential downsides

There are risks for operating companies acquiring rights of use over land not registered with the Land Registry, as there is no formal requirement for the holders of land use rights to disclose their rights to third parties and no actual means of making them opposable, by registering them in a public record (since the land itself is not registered). We recommend the use of contractual provisions to mitigate the risk of creating overlapping rights of use over the same plot.

Agricultural land – continuous push for stricter regulation

Since 1 January 2014, EU citizens and businesses have been entitled to acquire agricultural land in Romania. However, there seems to be considerable public resistance in a number of countries to the idea of agricultural land passing into foreign ownership, resulting in tight controls being imposed on agricultural land ownership. Romania is no different.

In response to changes introduced by the EU on this issue, a more restrictive and tightly regulated framework has been introduced for agricultural land acquisitions by both EU and Romanian entities (Law No. 17/2014), changing the procedure and ranking of pre-emption rights, along with detailed implementation rules.

Pre-emption rights ranking

Pre-emption rights to acquire agricultural land for sale at the same price and on the same terms are given in the following order:

— first, to co-owners of the land being sold;

— second, to tenant farmers who work on the land being sold;

— third, to neighbours of the land being sold; and

— finally, to the Romanian State (through the State Domain Agency).

The pre-emption procedure

It is the seller's responsibility to follow the procedure laid out by law in conjunction with the relevant City Hall where the land is located and the Romanian Ministry of Agriculture.

The seller's sales offer must be published at a local City Hall, along with all relevant documentation about the land for sale. The City Hall will then send a list of the relevant pre-emptors to either the Ministry of Agriculture or the relevant Department for Agriculture and Rural Development (DADR), depending on the size of the land.

The seller's offer remains valid for 30 days following publication at the City Hall, during which time the right holders may notify the City Hall that they accept the pre-emption offer.

If within the 30-day pre-emption period a lower-ranked right holder offers a higher price than the original sales offer, the seller has a further 10 days to opt to re-start the proceedings, giving higher-ranked right holders the opportunity to match the higher offer received.

Once the 30-day period has ended, the highest-ranking pre-emption right holder who notifies City Hall that they accept the offer will be selected as the buyer.

The seller must notify the relevant City Hall of the outcome, which the City Hall will then notify to the Ministry of Agriculture or relevant DADR. The sale can only proceed once it has been approved and verified by the Ministry of Agriculture or relevant DADR. The sale will be regarded as null and void if the seller fails to meet these requirements or alters the terms of the deal without repeating the 30-day pre-emption process.

Authors:

Roxana Fratila
T +40 21 407 3839
E roxana.fratila@cms-cmck.com

Alexandru Dumitrescu
T +40 21 407 3953
E alexandru.dumitrescu@cms-cmck.com

Major shift in environmental impact assessments in Slovakia

On 1 January, 2015 changes to the law governing environmental impact assessments (EIAs) came into force. These changes have been welcomed by non-governmental organisations active in environmental protection, whilst members of the industrial and business communities have sought (unsuccessfully) to have them overturned by presidential veto. Only time will tell how they work in practice, both for the parties and for the administrative agencies and courts.

The upside of the changes is that they allow the stakeholders to influence whether or not permits are granted for activities affecting the environment. The downside is that they will (as the legislation's sponsor conceded) increase the financial burden on businesses "as a result of the need to submit detailed documentation within the assessment process to determine specific conditions for carrying out an activity with environmental impact". In any event, it seems that the changes are likely to achieve their objective of preventing infringement actions by the European Commission (EC) against the Slovak Republic.

The changes were introduced in response to criticism by the European Commission relating to the existing law inadequately implementing Articles 6, 7 and 9 of the EIA Directive, resulting in insufficient ties between the process of assessing proposed activities and the follow-up permit proceedings. The EC considers that this creates space for disregarding the outcome of the impact assessment procedure, and fails to guarantee full exercise of rights by stakeholders who are parties to the proceedings or who wish to become parties of the proceedings affecting the environment.

Mandatory assessments

There are amendments to the activities (and changes to activities) that require a screening process and EIA. For instance, there will be a mandatory assessment for:

— any change in the proposed activity at or above a certain threshold

— any activity or change in activity which (according to an expert opinion of the state agency competent in the field of protection of nature and landscape) may be reasonably expected to significantly affect, either alone or in combination with another activity, the nature protection areas (NATURA 2000).

Broader range of applicants for EIAs

Under the new rules, any stakeholder will be able to apply for a decision whether or not an activity or change requires an EIA. This could previously only be done by an applicant, a competent body or an environmental organisation.

"Under the new rules, any stakeholder will be able to apply for a decision whether or not an activity or change requires an EIA"

Decisions concerning EIAs are now also challengeable by more parties (with all the attendant rights) and a wider range of legal remedies are available. The administrative code applies to decisions made during EIA screenings and final reports, meaning that they must be the product of an administrative procedure and will be appealable within 15 days. Decisions may be reviewed by court and (where the requirements are met) proceedings may be reopened.

There is a new definition of a stakeholders, who may be a natural or legal person and may be party to proceedings not only in the EIA procedure, but also in all follow-up proceedings (such as under the Building Act). Thus, if they submitted a written response to the proposal, evaluation report or final report, or presented justified comments regarding a decision issued in the scoping procedure or appealed a screening decision or a final report, they now fall within the definition of a party to proceedings. This means that they are directly affected by the proposed activity or the approval sought for it and are a party to the planning, building and occupancy proceedings (as defined by the Building Act), as well as to other proceedings under special regulations, such as integrated permit proceedings.

To ensure compliance with EU law and other international obligations, stakeholders (as defined above and referring to any person, including those who do not have the slightest relation to the activity assessed) will be able to appeal the screening decision and the final report, which takes the form of an administrative decision. The amendment also makes both of these decisions subject to a judicial review (under s.5 Civil Procedure Code), even though decisions issued in administrative proceedings are reviewable by the court in any event.

Building Act changes

The Building Act is also affected by the changes as building authorities will be required to publish on their official notice boards and their websites (if any) a copy of planning and building permit applications (without annexes) where the areas or structures concerned are subject to EIAs. The applications must be made available to the general public from the date when the applicable proceedings started until the day they are concluded.

In addition, building authorities must discontinue proceedings if the competent (environmental) agency issues a binding opinion that the planning, building or occupancy permit applications derogate from the final opinion established in the EIA proceedings and the applicant failed to amend his application accordingly within the allotted grace period.

Appeals by non-parties

Appeals against a planning, building or occupancy permit can now be brought by those who were not a party to the original proceeding, but only on the basis that the permit is inconsistent with the contents of the decision issued in the EIA procedure. Once an appeal is filed, the person filing it becomes party to the proceedings and is entitled to require that the permits be reviewed by the courts. The building authority cannot issue a decision without having obtained the final report of the EIA.

Other changes

Administrative authorities are required to respect the findings of the EIA process in all follow-up permit proceedings, and to check project documents for compliance with EIA process findings.

The earlier regulations will continue to apply to EIA proceedings relating to a specific activity (or change in activity) begun before 1 January, 2015, if the proceedings have reached the scoping stage.

Scoping opinions issued to applicants about a proposed activity (or change in activity) before 1 January, 2015 will expire on 1 December, 2017 if the applicants do not submit a statement in response by 30 November, 2017 (except where the scoping opinion lays down a schedule).

The earlier regulations will continue to apply to any process that has not progressed beyond the screening stage before 1 January 2015. However, the new rules may be used to appeal against any planning, building or occupancy permits taking effect after 31 December, 2014.

Author:

Jana Tögelová
T +421 2 3233 3432
E jana.togelova@rc-cms.sk

More clarity over real estate in Ukraine

Real Estate Register now publicly available

On 1 January 2015, public access was finally granted to the State Register of Proprietary Rights to Real Estate, enabling anyone to check the ownership status of land or buildings.

The change forms part of the Government's reform measures and anti-corruption drive, and represents a major improvement in the transparency of commercial relations in Ukraine.

Previously, access to the State Register was only granted to a limited audience (including owners and/or users of real estate, courts, state authorities etc.), which undermined the development of a business environment in Ukraine and fostered corruption and fraud in the real estate market.

The State Register includes information about:

— land plots, buildings, structures, integral property complexes, residential and non-residential premises

— the legal background to particular properties, including information about owners, lessees and other rights holders (eg. persons in favour of whom the servitude, emphyteusis or superficies are established)

— any mortgages, tax pledges or other property interests affecting the value of properties.

Accessing the Register

Anyone wishing to access the State Register must either apply in writing to a notary and/or the State Registration Service ('Option A'), or perform an independent online search at the State Registration Service website ('Option B').

Registry searches can only be conducted for specific immovable property. It is still not possible for third parties to search for real estate records about individuals or companies (e.g. accessing a list of properties owned or used by a company or an individual, etc.). This kind of search can only be conducted by state officials, municipal bodies, courts, law enforcement agencies, prosecution authorities, the security service and notaries.

Search results are provided in the form of a certificate containing the usual information about a particular property held at the Register. This does not list any personal data about rights holders such as personal identity document and tax details.

Online or in writing?

Although online searches might seem the quicker and easier option, the newness of the service is still giving rise to some technical issues, which can slow the process down. In addition, the online database is not yet complete. Until the online service is fully up and running, we recommend Option A.

"The change forms part of the Government's reform measures and anti-corruption drive, and represents a major improvement in the transparency of commercial relations in Ukraine"

Option A: Filing a search request in writing

1. Applicants must pay an official search fee of UAH 34 (c. €2) by wire transfer in advance or in cash upon filing.
2. They must then complete and submit an application form to the notary and/or the State Registration Service, along with a document verifying that the search fee has been paid.
3. The Registrar will verify the applicant's identity (i.e. checks their passport) and register the application.
4. The Registrar will conduct the search within one working day of registration and issue the results in the form of a paper Certificate.

Option B: Performing an online search

Any person interested (there is no restriction on foreign applicants) can gain online access to the State Register at the State Registration Service website: http://kap.minjust.gov.ua.

1. First, they must register as a user. This requires them to provide their full name, tax number and personal identification details (passport/ ID card) or, if the search is performed on behalf of a legal entity, its name, tax identification number and the full name of its representative.
2. Having registered, the user is then able to search for information about a particular property by entering details such as its address.
3. The search results are issued in the form of an electronic Certificate.
4. For each online search, a fee of UAH 17 (c. €1) is payable.

Authors:

Daniel Bilak
T +380 44 391 7701
E daniel.bilak@cms-cmck.com

Natalia Kushniruk
T +380 44 391 7724
E natalia.kushniruk@cms-cmck.com


Moscow
Warsaw
Kyiv
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Belgrade
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Sarajevo
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Your CMS Real Estate Regional Contacts

CENTRAL AND EASTERN EUROPE

Wojciech Koczara
T +48 22 520 8320
E wojciech.koczara@cms-cmck.com

Gregor Famira
T +385 1 4825 600
E gregor.famira@cms-rrh.com

AUSTRIA

Nikolaus Weselik
T +43 1 40443 2250
E nikolaus.weselik@cms-rrh.com

RUSSIA

Alexander Batalov
T +7 495 786 40 00
E alexander.batalov@cmslegal.ru

TURKEY

Alican Babalioglu
T +90 212 243 49 28
E alican.babalioglu@cms-cmck.com

GLOBAL

Dirk Rodewoldt
T +49 711 9764 163
E dirk.rodewoldt@cms-hs.com

Arnout Scholten
T +31 20 3016 472
E arnout.scholten@cms-dsb.com

BULGARIA

Jenia Dimitrova
T +359 2 923 4853
E jenia.dimitrova@cms-cmck.com

CZECH REPUBLIC

Iveta Plachá
T +420 296 798 878
E iveta.placha@cms-cmck.com

HUNGARY

Gábor Czike
T +36 1 483 4819
E gabor.czike@cms-cmck.com

POLAND

Wojciech Koczara
T +48 22 520 8320
E wojciech.koczara@cms-cmck.com

ROMANIA

Roxana Fratila
T +40 21 407 3839
E roxana.fratila@cms-cmck.com

SLOVAKIA

Sylvia Szabó
T +421 2 32 33 34 21
E sylvia.szabo@rc-cms.sk

UKRAINE

Daniel Bilak
T +380 44 391 7701
E daniel.bilak@cms-cmck.com

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