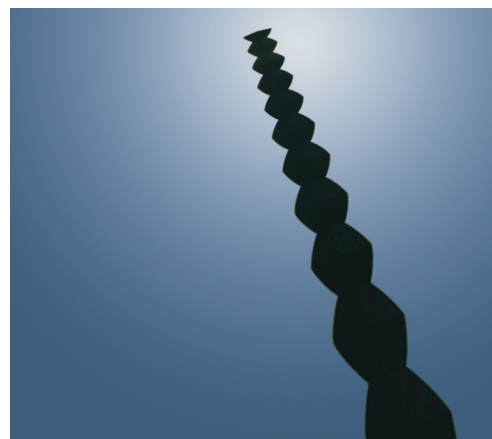


INVESTING IN ROMANIA



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REAL ESTATE PROPERTY REGIME IN
ROMANIA

In Romania, real estate property is owned by the state or by administrative territorial units (state public or private property) or by private entities (private property).

Property under public ownership is set out by the Constitution, organic laws, government decisions and decisions of district and local councils. Such property cannot be assigned or enforced, and the public ownership right is not subject to any prescription.

Real estate property under private ownership, irrespective of the scope and holder thereof, usually belongs and remains in civil circulation. There are exceptions to this rule in the form of interdictions, general or special, provisional or permanent. Without describing such situations, it is though noteworthy to mention the provisional interdiction to alienate the land plots acquired pursuant to the land law through the creation of an ownership right for a 10-year period.

METHODS TO EXPLOIT STATE PUBLIC
OR PRIVATE PROPERTY

The property under the public ownership of the state may be offered for administration purposes to the autonomous administrations or to the public institutions, granted for concession or leased, as well as offered, free of charge, for the use of the legal entities conducting benevolent activities or public utility-related activities or of the public services.

Public property of the state and
of territorial administrative units

(1) Concession

Private entities may use the property under public ownership based on the concession agreements concluded with the state, district, town or commune. Under such concession agreement, the grantor (holder of the ownership right over the public interest goods) transfers towards the grantee (a Romanian or foreign individual or private legal entity) the

right and obligation to exploit a property on its own risks and liability, in exchange for a royalty. The concession contract is awarded following a public tender held by the public authority (or, in exceptional cases, subsequently to the conduct of direct negotiation procedure).

The duration of the concession contract having as object goods which represent public property is set in accordance with the period of depreciation of the investment to be made by the grantee. Romanian law stipulates a maximum term of 49 years and also provides for the possibility of extending such term upon the parties' simple agreement, for a further period equal to half of the contract's initial period.

(2) Public-private partnership

Another method for exploiting the property under public ownership is represented by the **public-private partnerships** which can be defined as partnerships between public entities and private entities for the purpose of developing a service or a project which are usually developed by the public entities. Common forms of public private partnerships are the works or services concession agreements regulated by Government Emergency Ordinance no. 34/2006 and pursuant to which the private entities develop a project of services for the public entities in exchange for the right to exploit such project of services for a determined period of time. The public or private works concession agreements are usually awarded by the state further to an open tender. Other methods that can be used in situations expressly provided for by law for the award of such agreements are: restricted tender, competitive dialogue and negotiation. Other forms of public-private partnerships the object of which may be represented by the exploitation of a state property are the joint venture **agreements and the lease agreements**.

The particularity that distinguishes between public property concession and public-private partnership is the risk sharing between the public and private entity in the latter case.

Private property of the state and
of territorial administrative units

The land plots under the private ownership of the state may be granted for concession by public tender (the right to use such land for a



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limited time period being thus transferred) in order for constructions to be erected. A concession agreement having as object a land under the private ownership of the state may be concluded without public tender in exceptional cases, such as, for instance, for the extension of the buildings existing on neighboring lands.

The term of the concession agreement having as object a land under the private ownership of the state is determined by the competent public authorities based on the scope of the concession agreement.

In full compliance with the applicable legal provisions, the private property of the state or of administrative territorial units may be alienated through sale or swap.

METHODS TO EXPLOIT THE PRIVATE
PROPERTY OWNED BY OTHER
ENTITIES

The lands with or without constructions, located inside or outside the built-up area, regardless of their purpose or their size, under private ownership, may be assigned and acquired by legal deeds concluded in authenticated form (sale and purchase, swap, donation). The authenticated form is also necessary in the case where by means of legal deeds concluded one transfers a real right over a land, with or without a construction, regardless of the purpose or the size thereof. The property represented by buildings under private ownership may also be leased, whereas agricultural lands may be rented.

FOREIGN CITIZENS' RIGHT
OF OWNERSHIP

Foreigners (individuals or legal entities) cannot acquire ownership right over lands on the Romanian territory. Said prohibition did not also refer to constructions and/or apartments, therefore foreigners could validly obtain a right of ownership over the same, and, in this case, they will acquire by law a right of use over the land on which the respective construction is erected.

The accession of Romania to the European Union (January 1, 2007) triggered the entering



into force of Law no. 312/2005 regarding acquisition of property over land by foreign citizens and stateless persons, as well as foreign legal persons.

Despite the fact that by said normative acts, the foreign citizens' rights were extended, and one even created the possibility for the citizens of the European Union member states who are Romanian residents to acquire lands, the prohibition of acquiring lands in Romania practically continues to exist for a further period of 5 years following the accession date, for lands inside the built-up area, on which constructions may be erected, and for 7 years following the accession date for agricultural and forest lands.

The practical method that allows foreign investors, both individuals and legal entities, to acquire lands is to establish companies in Romania having as shareholder the respective investor, and these companies, as they are Romanian entities, may acquire lands in Romania without any restriction

CONSTRUCTION OF BUILDINGS

The legal framework for the execution of construction works is mainly represented by the

laws on territory arrangement and urban planning and on the authorization of the execution of construction works.

The law on territory arrangement and town planning lays down the urban development criteria and, respectively, the responsibilities of public authorities with respect to the drafting and/or approval of general zoning plans, regional zoning plans and detailed zoning plans. The zoning plans determine the parameters (land occupancy coefficient, maximum height of the building etc.) to be observed when constructing a building. The town planning certificate is the official deed setting out the zoning conditions under which buildings may be erected on a land plot. In 2008 and 2009, the territory arrangement and town planning law has been amended and supplemented. The new legal provisions are mainly intended to limit extra-statutory zoning by consolidating the General Zoning Plan and establishing a territorial development strategy at a national level. The legislative measure came as a response to the fact that, over the last few years, it has been found, on the Romanian construction market, that General Zoning Plans were either obsolete and not up-to-date or inexistent in certain localities, thus failing to

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meet the requirements of a balanced development, which was the trigger for resorting to a compromise, namely: extra-statutory Area Zoning Plans.

In order for the right to build to be granted, it is necessary to carry out the following stages, the scope and result of which is the issuance of the building permit: (i) the procurement of the town planning certificate concerning the land; (ii) the initial assessment of the investment and the setting out of the need to assess the environmental effects thereof; (iii) the notification of the local public administration authority with respect to maintaining the application for the authorization of construction works; (iv) the procurement of the approvals and agreements provided by the town planning certificate; (v) the preparation of the administrative deed of the competent authority for environmental protection; (iv) the preparation of the technical documentation; (vii) the submission of the documentation for the authorization of construction works.

TAXATION OF REAL ESTATE TRANSACTIONS

According to the Fiscal Code, individuals pay a tax on the ownership right (and dismemberments) transfer, by inter vivos agreements/acts in respect of any kind of buildings and related lands, as well as any kind of land free of any buildings, as follows:

For any kind of buildings and related lands, as well as any kind of land free of any buildings, acquired within a period of up to, and inclusive of, 3 years:

- (a) 3% up to, and including, the value of RON 200,000;
- (b) RON 6,000 + 2% applied to the value exceeding, and including, RON 200,000, for a value over RON 200,000;

In respect of the above mentioned estates, if acquired within more than 3 years:

- (a) 2% up to, and including, the value of RON 200,000;
- (b) RON 4,000 + 1% applied to the value



exceeding, and including, RON 200,000, for a value over RON 200,000.

The tax shall not be due in case: (i) the ownership right over buildings and lands is obtained by reconstruction of property right pursuant provisions of special laws; (ii) the ownership right over buildings and lands is obtained by donation between relatives and in-laws up to 3rd degree, as well as between married persons.

In case the property (or dismemberments) is obtained by inheritance, no tax is due, provided the inheritance procedure is finalized within maximum 2 years from the date of the decease of the individual. In case the inheritance procedures are not finalized within the 2-year term, the successors shall pay 1% tax on the value of the inheritance. Legal entities pay profit tax for the profit obtained from transferring the ownership right over real estate.

VALUE ADDED TAX FOR REAL ESTATE TRANSACTIONS

According to the latest amendments to the Fiscal Code, since 2008 companies that carry out real estate transactions must also pay, as compared to the previous year, a VAT of 19%.

The standard VAT quota of 19 % can be decreased to 5 % applied to the taxation basis for the delivery of dwellings, including the land on which the same are built (and also the footprint on ground for the dwelling). The decreased quota of 5 percent becomes applicable among others, to the delivery of dwellings having a net area of maximum 120 sq m, with a value that does not exceed RON 380,000 (without VAT), acquired by any single person or family. In order to benefit of the 5% quota, it is necessary to respect some conditions. Any single person or family may benefit of the 5% quota at the acquisition of a single dwelling only one time in their life.

REAL-ESTATE REGISTRATION

The ownership right over real estate becomes opposable to third parties through its registration with the land registry (the register of real estate recording and registration). Should a right be registered with the land book in favor of a person, it is presumed, unless evidence is brought to the contrary, that such right is held by the respective person.

As a general real estate register, the land register includes both information regarding the holder of the right of ownership over the

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real estate property and information on the potential charges (mortgages, privileges or easements) or other facts and rights that burden such real estate (i.e. the right granted to a third party to use the real estate property, lease contracts with a duration of over 3 years, incapacities, provisional rights that are to be subsequently justified, the intention of assignment or mortgage creation, personal rights, actions in court and remedies at law, as well) The Romanian real estate registration system also aims to determine the size and location of real estate property on the Romanian territory by cadastral identification.

