

OWNERSHIP OF REAL ESTATE

IV

IV.1. Legislative framework and general rules

IV.1.1. Legislative framework

The major legislative acts governing the real estate and real estate transactions in Bulgaria are the Bulgarian Constitution, The Property Act, The State Property Act, The Municipal Property Act, The Civil Procedure Code, The Encouragement of Investments Act, The Territorial Development Act and The Contracts and Obligations Act.

IV.1.2. Direct acquisition of real estate in Bulgaria by a foreign company

In Bulgaria foreign companies can directly acquire buildings, premises within a building and limited property rights (e.g., a construction right, right of use), but not property on land.

IV.1.3. Indirect acquisition of real estate in Bulgaria by a foreign company

Indirectly, foreign companies can acquire any type of real estate, including land, by registering a Bulgarian company to act as acquirer. It is possible for such a company to be 100% owned by the foreign investor.

IV.1.4. The transaction

The general rule under Bulgarian law is that transactions involving real estate (e.g. a purchase, exchange, etc.) should be executed by a notary deed performed before a registered notary in the region where the real estate is located. After execution of the deed the notary is obliged, by law, to register the transaction in the Real Estate Registry in order to make the ownership title of the acquirer defensible against third parties.

A notary deed is not required for the sale of state or municipal property or in privatization transactions where the simple written form is sufficient for a valid title transfer. There are also special rules and procedures governing the acquisition of real estate arising from enforcement, insolvency and similar procedures, and for in-kind contributions of real estate.

IV.1.5. The price

The purchase price is freely negotiable and may be stipulated and paid in BGN or in any other currency.

IV.1.6. Legitimacy of the buyer

a) Direct acquisition

Where a foreign company acquires directly buildings, premises or limited property rights it should ensure that at least the following documents are presented: Resolution of the competent corporate body approving the acquisition of the targeted real estate. The resolution has to be notarized and apostilled in

the respective country and translated in Bulgaria by a certified Certificate for Good Standing – apostilled in the respective country and translated in Bulgaria by a certified translator.

Power-of-attorney, signed before a notary and apostilled in the respective country and translated in Bulgaria by a certified translator, for the person who will represent the foreign investor before the Bulgarian notary.

b) Indirect acquisition

Where a foreign company indirectly acquires real estate in Bulgaria through a Bulgarian subsidiary company it should ensure that at least the following documents are presented:

- Resolution of the competent corporate body of the Bulgarian subsidiary approving the acquisition of the targeted real estate.

- Certificate for Good Standing of the Bulgarian subsidiary – original or a certified copy.

- Power-of-attorney signed before a notary for the person (if this is not the person pointed out in the Certificate for Good Standing as the person representing and binding the Bulgarian subsidiary) who will represent the Bulgarian subsidiary before the Bulgarian notary handling the transaction.

- Certificate for tax registration for the local subsidiary – the original and a copy for the notary.

- BULSTAT (statistic) registration card of the Bulgarian subsidiary – the original and a copy for the notary.

IV.2. Statutory costs and expenses.

Transfer tax – 2% of the higher of the purchasing price agreed between the parties, or the tax valuation made by the tax office prior to the transaction. The tax may be shared between the parties or be just born by one of them.

- Fee for registration in the Real Estate Register – 0.1% of the higher of the

- purchasing price agreed between the parties, or the tax valuation made by the tax office prior to the transaction. The fee may be shared between the parties or be borne by just one of them.

- Notary fee – according to the statutory investor or its Bulgarian subsidiary.

The person authorized to dispose of marketable state owned real estate is the Regional Governor of the administrative region where the property is located.

Currently a sale is to be performed through either a tender or an auction. The Regional Governor determines the tender or auction procedures with an administrative order. After the issuance of another administrative order announcing the winner in the tender/auction, a sale purchase contract is concluded. The contract has to be registered at the Real Estate Registry in order to make the ownership title of the acquirer defensible against third parties.

Currently an exchange is performed without a tender

or auction. The Regional Governor issues an administrative order, which has to be approved by the Minister of Regional Development and based on that a contract is concluded. The contract has to be registered at the Real Estate Registry in order to make the ownership title of the acquirer defensible against third parties.

Where the value of the property is over BGN 550,000 the sale and the exchange can only be performed after a decision of the Council of Ministers initiated upon the proposal of the Minister of Regional Development. In such circumstances the Minister of Regional Development issues an administrative order and then concludes the contract for the sale or exchange.

IV.5.2. Acquisition of marketable municipality owned real estate

The person entitled to conclude a contract for sale or exchange of marketable municipal real estate is the Mayor of the municipality in which the property is located.

Currently a sale is to be performed through either a tender or an auction. The Municipal Council determines the tender or auction procedures in a special Ordinance. After the issuance of another administrative order announcing the winner in the tender/auction the Municipal Council passes a resolution or the Mayor issues an administrative order. On the basis of the said resolution/administrative order, the Mayor concludes a formal contract. The contract has to be registered at the Real Estate Registry in order to be opposable to third parties. Currently an exchange is performed without a tender or an auction. The Municipal Council passes a resolution to effect the exchange. On the basis of the said resolution, the Mayor concludes a formal contract.

The contract has to be registered at the Real Estate Registry in order to make the ownership title of the acquirer defensible against third parties.

Notary Tariff not more than BGN 3,000 (approx. Euro 1,550) per transaction. The fee may be shared between the parties or borne by just one of them.

IV.3. Title review (Real estate legal due diligence)

Before purchasing real estate it is recommended that the buyer ensure verification of the ownership status of the targeted real estate, including that there is/are:

- a clean, valid and marketable ownership title held by seller. The seller has to be, and his predecessors should have been the valid owner of the targeted real estate in order to avoid any risk of rescinding or annulment of the transaction. Usually, this title review covers the last 10 years since the maximum acquisitive prescription term in Bulgaria is 10 years;
- no lien or encumbrances over the property. The buyer should be fully aware as to whether there are any registered liens and/

or encumbrances over the targeted real estate, e.g., mortgages, interlocutory injunctions, going-concern pledges, limited property rights established in favor of third parties. A general principle in Bulgarian law is that liens and encumbrances "follow the property", i.e., the registered liens and encumbrances can be enforced against the new owner;

- no other registered rights in favor of third parties – if there are registered rental or lease agreements over the targeted real estate then the buyer shall be bound by them until the expiration of their term;
- no court or restitution claims.

IV.4. Other possible reviews/analysis

Depending on the type, usage, location and zoning of the real estate and the complexity of the transaction zoning, construction and business feasibility studies and a business valuation might also be considered by the buyer.

IV.5. Special cases

IV.5.1. Acquisition of marketable state owned real estate

Marketable state owned real estate can be acquired through a purchase transaction or through its exchange with other real estate owned by the foreign

IV.6. Incentives

IV.6.1. General

Upon the request of an investor whose investment is certified by the Properties Guide Ltd. ("BIA") as a "first class investment" the BIA shall propose to the competent state or municipal body that they:

- transfer to the investor, without remuneration, the ownership title over marketable real estate owned by the state or municipality; or
- sell to the investor marketable real estate owned by the state or municipality; or
- establish, with or without remuneration, limited property rights in favor of the investor over private real estate owned by the state or municipality.

IV.6.2. Transfer of the ownership title over real estate owned by the state without remuneration

The transfer of ownership over marketable state owned real estate to an investor without remuneration should be initiated by BIA, which has to send a formal proposal to the Ministry of Regional Development. In its turn, the Ministry of Regional Development has to send a formal proposal to the Council of Ministers. If the Council of Ministers accepts the proposal it will issue a resolution allowing the transfer of the said real estate. On the basis of the resolution of the Council of Ministers, the Regional Governor of the region, where the real estate is located, concludes a formal contract with the investor. The contract has to be registered at the Real Estate Registry in order to make the ownership title of the acquirer defensible against third

parties.

IV.6.3. Sale of marketable real estate owned by the state without a tender/auction

The sale of marketable real estate owned by the state without a tender/auction is started by the preparation of an evaluation by an independent certified evaluator. The Minister of Regional Development and the Minister of Economy provide a written opinion on the sale of the real estate and on the evaluation. The relevant Regional Governor can then issue an administrative order and conclude the sale contract.

IV.6.4. Sale of marketable real estate owned by the municipality without tender/auction

The sale of marketable real estate owned by a municipality without a tender/auction is started by the preparation of an evaluation by an independent certified evaluator. The Municipal Council then passes a resolution with an administrative order issued by the Mayor of the region where the real estate is located. On the basis of the said resolution the Mayor can conclude a formal contract with the investor .

IV.6.5. Establishment of limited property rights over marketable real estate owned by the state without remuneration

The establishment of limited property rights over marketable real estate owned by the state without remuneration should be initiated by BIA, which has to send a formal proposal to the Council of Ministers. If the Council of Ministers accepts the proposal, it should issue a resolution allowing the establishment of limited property rights over the said real estate. On the basis of the resolution, the relevant Regional Governor then concludes a formal contract with the investor.

IV.6.6. Establishment of limited property rights over marketable real estate owned by a municipality without remuneration

The establishment of limited property rights over marketable real estate owned by a municipality without remuneration is initiated by BIA, which has to send a formal proposal to the Municipal Council. If the Municipal Council accepts the proposal it will issue a resolution with an administrative order of the Mayor, allowing the establishment of limited property rights over the said real estate.

IV.6.7. Establishment of limited property rights over marketable real estate owned by the state without a tender/auction

The establishment of limited property rights over marketable real estate owned by a municipality without a tender/auction is started by the preparation of an evaluation by an independent certified evaluator.

The Minister of Regional Development and the Minister of Economy provide a written opinion on the sale of the real estate and on the evaluation. The relevant Regional Governor can then issue an administrative order and conclude the sale contract.

IV.6.8. Establishment of limited property rights over marketable real estate owned by a municipality without a tender/auction

The establishment of limited property rights over marketable real estate owned by a municipality without a tender/auction is started by the preparation of an evaluation by an independent certified evaluator. The Municipal Council should pass a resolution and the Mayor should issue an administrative order. On the basis of the said resolution the Mayor can conclude a formal contract with the investor.

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