CEE LEGAL MATTERS COMPARATIVE LEGAL GUIDE: REAL ESTATE 2021

SERBIA

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1. Real estate ownership

1.1. Legal framework

The *Serbian Constitution* guarantees peaceful enjoyment of ownership and other property rights. The Constitution allows restriction in the sense of the manner of using the property, but such restrictions may be imposed only by law. Further, taking away or restricting of property to collect taxes and other levies or fines may be permitted only in accordance with the law.

Serbia is also party to a number of international treaties in the realm of human rights, including the European Convention on Human Rights, including its Protocol 1, which entitles every natural or legal person to the peaceful enjoyment of his possessions. In terms of hierarchy, ratified international treaties are below the Constitution, but are above all other national laws and regulations.

Key pieces of legislation regulating real estate in Serbia are:

- *Act on Basics of Property-Legal Relations (Zakon o osnovama svojinskopravnih odnosa, Official Gazette of SFRY nos. 6/80 and 36/90, Official Gazette of FRY no. 29/96 and Official Gazette of RS no. 115/2005*) – this law contains the basic provisions on the ownership rights, easement rights, possession, and other real estate matters;

- *Act on Transfer of Immovable Property* (*Zakon o prometu nepokretnosti, Official Gazette of RS nos. 93/2014, 121/2014 and 6/2015*) – this law regulates the transfer of ownership title to immovable property;

- *Obligations Act* (Zako*n o obligacionim odnosima, Official Gazette of SFRY nos. 29/78, 39/85, 45/89 and 57/89, Official Gazette of FRY no. 31/93, Official Gazette of SCG no. 1/2003 and Official Gazette of RS no. 18/2020*) – this law regulates contracts, torts, and other sources of obligations, and as such contains the basic rules for sale and purchase contracts;

- *Mortgage Act* (*Zakon o hipoteci, Official Gazette of RS nos. 115/2005, 60/2015, 63/2015 and 83/2015*) – this law regulates the establishment, transfer, termination, and out of court foreclosure of mortgages;

- *Enforcement and Security Act* (*Zakon o izvrsenju i obezbedjenju, Official Gazette of RS nos. 106/2015, 106/2016, 113/2017, 54/2019 and 9/2020*) – this law regulates judicial enforcement, including, inter alia, judicial enforcement of mortgage;

- *State Survey and Cadaster Act* (*Zakon o drzavnom premeru i katastru, Official Gazette of RS nos. 72/2009, 18/2010, 65/2013, 15/2015, 96/2015, 47/2017, 113/2017, 27/2018, 41/2018 and 9/2020*) and *Act on Procedure of Registration in the Cadaster of Real Estate and Lines* (*Zakon o postupku upisa u katastar nepokretnosti i vodova, Official Gazette of RS nos. 41/2018, 95/2018, 31/2019 and 15/2020*) – these two laws regulate the registration of immovable property and infrastructure lines, as well as title and encumbrances on them, in the cadaster of real estate *i.e.* cadaster of lines.

- *Public Property Act* (*Zakon o javnoj svojini, Official Gazette of RS nos. 72/2011, 88/2013, 105/2014, 104/2016, 108/2016, 113/2017, 95/2018, and 153/2020*) – this law regulates public ownership and other property rights of the state, autonomous province and municipalities;

- *Expropriation Act* (*Zakon o eksproprijaciji, Official Gazette of RS no. 53/95, Official Gazette of FRY no. 16/2001 and Official Gazette of RS nos. 20/2009, 55/2013 and 106/2016*) – this law sets the general regime for full or partial expropriation of ownership;

- *Planning and Construction Act* (*Zakon o planiranju i izgradnji, Official Gazette of RS nos. 72/2009, 81/2009, 64/2010, 24/2011, 121/2012, 42/2013, 50/2013, 98/2013, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019, 9/2020 and 52/2021*) – this law regulates, inter alia, the status of construction land, as well as the construction of buildings.

In terms of rights in real estate, Serbian law recognizes ownership as the fullest scope of entitlements to real estate, which in general allows the ownership titleholder to possess a piece of real estate, to use it, and to dispose of it. Other rights in real estate (so-called sectoral rights) afford its titleholder fewer entitlements, the scope of which varies from one sectoral right to the other. These include real and personal easements, mortgages, right of use, *etc.* Right of lease is not considered a property right, but it comes close to it – this is especially the case with a long-term lease of public construction land, which represents sufficient title for the lessee for construction on such land.

Foreigners have generally the same rights in terms of acquiring rights to movable property, however, in the case of immovables, the situation is quite different. Foreign natural and legal persons who do business in Serbia are entitled to acquire ownership of immovable property provided that **(i)** such property is required for its respective business, and **(ii)** there is reciprocity. A foreign physical person is entitled to acquire ownership of an apartment or a residential building, provided that there is reciprocity. Authorities tend to interpret these conditions restrictively. Further, in general, foreigners are not entitled to acquire title to agricultural land (except for EU citizens, but even for them, the conditions for acquiring agricultural land are quite harsh). However, all of the aforementioned limitations in acquiring immovable property can easily be overcome if the foreigners incorporate an SPV in Serbia – such SPV is then considered a domestic person, so the limitations for foreigners in the acquisition of immovables would not apply to it.

Expropriation is possible under Serbian law, but only in the public interest, and against payment of compensation which cannot be below the market value (this principle is embedded in the Constitution). It can be either full (resulting in loss of ownership) or partial (where the ownership title remains but is burdened with an easement or a lease). General rules of expropriation require that the beneficiary of expropriation be a public entity, and set the procedure on how the property is expropriated and how the owner is to be compensated. Usually, expropriations are seen as bottlenecks for the development of large infrastructural projects, since private owners tend to resort to courts in order to secure higher compensations, which, in turn, due to the inefficient judicial system, slows down the entire process. There are several special laws, which have, for the sake of speed and simplification, stipulated for streamlined expropriation procedure in case of particular projects (*e.g.* Belgrade Waterfront project, South Stream Gas Pipeline project), or for a particular set of projects (*e.g.* linear infrastructural projects of national significance).

The legislative framework in the area of real estate is relatively dynamic. This comes as a result of the need to introduce the necessary legal certainty in this area, but also as a response to the requirements of modernization and social and economic development. This can be seen in the digitalization of databases, e-cadastral procedures, e-construction permits, integration of various procedures into one-stop shops, *etc.* Nevertheless, the real estate sector is still perceived as not having enough predictability, due to inconsistent laws, legal loopholes, or divergent interpretation of the laws by the authorities.

The real estate market today is seeing a great increase in demand for residential property, especially in Belgrade. In parallel, there are several landmark PPP projects that have a large real estate content, such as Vinca landfill remediation and development, Belgrade airport concession. Also, the state is investing heavily in infrastructural projects, such as highways, railways, and waste-water treatment. This all together creates a vibrant and booming real estate market, despite the challenges in terms of legal certainty.

1.2. Registration of ownership

The general rule is that transfer of ownership to immovable property which is based on a legal transaction (*e.g.* sale and purchase contract) has to be registered in the real estate cadaster – the acquirer is considered as the owner only if it is so registered. There are, however, cases when the registration of title in the real estate cadaster is only declaratory, *i.e.* when the acquirer is considered as owner even before the registration – *e.g.* in case of inheritance or in case of acquisition which is based on the law. In such cases, registration with the real estate cadaster is still mandatory, but, as said before, it only has declaratory, and not constitutive effect. These rules apply also to ownership and other rights to infrastructural lines, with the exception that they are registered in the cadaster of lines.

Similar rules, in terms of registration requirements, apply to other rights in real estate – *e.g.* mortgage, easements. There are also certain rights that are not real estate rights in the strict sense, such as lease – which can but do not have to be registered in the real estate cadaster (except for the long-term lease to public construction land, which has to be registered as well).

Ownership to movable assets, on the other hand, does not require registration in order to be effective. However, in the case of a pledge, if the parties agree to have a registered pledge, the pledge becomes effective only after being registered in the pledge registry.

The real estate cadaster and the cadaster of lines are public databases maintained and managed by the Republic Geodetic Authority (state body) and its offices for real estate cadaster. Pledge registry is maintained and managed by Agency for Commercial Registries (public agency).

1.3. Publicity of real estate register

The current legal status of the property is publicly available, save for certain personal data. Unofficial checks can be done online (whereas registered users have access to more data than unregistered ones), whereas official excerpts require payment of fees. Access to the documentation on the basis of which the registrations were made, as well as the registration decisions are available only to the concerned parties and to third parties who can demonstrate sufficient legal interest to access those files.

1.4. Protection of ownership

Cadastral legislation is based on the principle of reliance, which means that data that is registered in the cadaster of real estate is deemed true and complete, and a bona fide person cannot sustain harm due to relying on such data. There has been some questionable case law on this principle, and the courts tend to interpret the bona fide requirement rather wide, so due diligence is generally recommended in order to benefit from this reliance principle.

Registration of title in the cadaster of real estate is subject to challenges both before the cadaster and before the administrative court. In other words, registration in the cadaster is not considered final and binding before **(i)** the appeal period lapses without an appeal being lodged, or the lodged appeal is dismissed or denied, and **(ii)** the period for fining administrative suit lapses without the suit being lodged, or the lodged suit is dismissed or denied. As a general note, in order to be deemed registered, it is necessary that the cadastral decision

on registration becomes final in administrative procedure and non-contestable in administrative dispute procedure.

Furthermore, even if the registration is final and binding, there is a possibility of contesting such registration via extra-ordinary remedies, although the grounds for such remedies are limited.

The fact that a registration is final and binding does not prevent the third parties to file ownership (or other kinds of) suit by which it requests that it be regarded as the owner instead of the registered owner, or that the registered owner's title is limited by sectoral rights of the plaintiff (*e.g.* easement) – the success of such suit will, of course, depend on the facts of the case and the evidence supporting the claim, but also on whether the defendant may invoke the reliance principle (see above).

2. Real estate acquistion

2.1. Share deal or asset deal?

Both share deals and asset deals are present on the Serbian market. Share deals are almost always performed via limited liability companies. Share deals are often utilized as means not to pay property transfer tax (2.5%) – there is no transfer tax on shares in Serbia, and the tax authorities are still not that sophisticated so as to recognize share deals as asset deals in disguise. Thus, the tax aspect is an important motivator when deciding which form of acquisition to choose.

There are, however, cases, where asset deals are more attractive for buyers – *e.g.* in the case the asset owner is a company with a long history, where share deal is risky in terms of liabilities which the asset owner has created through its history. Even in such cases, the deal may be structured as a share deal, where the asset owner first invests the asset as an in-kind contribution into a new SPV and then sells shares to the buyer.

2.2. Share deal

Formally speaking, a share deal requires the seller and buyer to conclude a share purchase agreement, whereby the buyer buys the shares in the company owning the assets (theoretically, other kinds of an agreement are also possible – *e.g.* share exchange agreement). Signatures on such agreement need to be notarized, and the share transfer needs to be registered in the Serbian commercial registry. The notarization and registration fees are not material. Share transfer per se does not trigger transfer taxes, but the seller may be exposed, depending on the facts of the case, to capital gains tax.

In reality, however, the transaction is usually much more complex and involves due diligence analysis and a set of conditions precedent to closing. Given that, by the acquisition of shares, the asset owning company continues to be liable for all liabilities, the buyer should be motivated to properly check the target and negotiate necessary undertakings, indemnities, representations and warranties, and conditions precedent so as to handle the risks associated with share deals. The buyer is especially interested to get as many indemnities, representations, and warranties and conditions precedent in relation to the asset itself, because, unlike with asset deals, in share deals, the buyer cannot benefit from statutory warranties of the seller vis-a-vis the targeted assets.

Share deals also usually involve synchronized management change and various corporate actions. Depending on the facts of the case, a merger clearance may be required for a share deal (though, such clearance may also be required in asset deals).

2.3. Asset deal

Formally, an asset deal requires the seller and buyer to conclude a sale purchase agreement, whereby the buyer buys the assets owned by the seller (theoretically, other kinds of an agreement are also possible – *e.g.* asset exchange agreement). The agreement needs to be signed before a notary who is competent for the area where the assets are located, and the notarization takes a stricter form than in the case of a share deal. The transfer has to be registered in the cadaster in order to be effective, whereby the notary itself initiates the registration process immediately upon signing. The notarization and registration fees are not material. Asset deal in principle triggers property transfer tax (2.5%) and the obligation of the buyer to report the transfer for the purpose of static property tax. Depending on the facts of the case, the seller may be exposed to capital gains tax.

As with the share deal, in reality, for complicated and/or more valuable deals, the transaction is usually much more complex and involves due diligence analysis and a bunch of conditions precedent to closing. Even though there are certain statutory warranties of the seller vis-a-vis the targeted assets, these are not detailed enough, so the buyer would usually want more concrete representations and warranties included in the transaction. Depending on the findings of the due diligence process, the buyer may also want to include further undertakings, indemnities, and conditions precedent so as to handle the identified risks.

2.4. Disposal process

Share deals require notarization of signatures and registration of share transfer with the Serbian commercial registry. Share transfer agreement needs to be (also) in Serbian (parties tend to prepare a short form share transfer agreement which they use solely for the purpose of share transfer registration, so as to keep the confidential aspects of the transaction in the

long-form contract). Depending on the facts of the case, the involvement of court-sworn interpreters and witnesses may be required. Notarization fees for signature attestation are not material – this is because the notary is not liable for the content of the agreement or its enforceability, he/she is only checking the identity of the signatories.

In the case of asset deals, a stricter notarial form is required – the so-called "solemnization." The contract needs to be (also) in Serbian and has to contain certain elements (including a cadastral description of the property, as well as an unconditional permission of the seller that the asset be transferred to the buyer – such permission may be granted in a separate solemnized document). Depending on the facts of the case, the involvement of court-sworn interpreters and witnesses may be required. The notary needs to check the capacity and authorities of the parties, as well as whether the transaction is permitted. Notaries are liable for damages they cause and are obliged to maintain liability insurance. Thus, in light of its greater potential liability, he/she makes much more checks when solemnizing an asset deal than with the share deal. As soon as the contract is solemnized, the notary sends the contract to the cadaster in order for it to perform the title transfer registration, as a mandatory step in title acquisition. Notarization fees for solemnization depend on the value of the transaction and may amount to several thousand euros.

Depending on the form of sale (share/asset deal) and facts of the case, different approvals, consents, or proceedings may be required. Below are a few typical ones that appear in private deals (transactions involving public property involve additional procedures and a potential need for consents and approvals).

Usually, in a share deal, if the share is being sold by a physical person, and is part of matrimonial property, spousal approval is required. If it is owned by a company, the owner's approval may be required (unless the need for it is excluded via a foundation act). The foundation act may also prescribe that the company itself needs to approve the transfer of shares. For pre-emption rights of shareholders see below.

In an asset deal, if the asset is owned and being sold by a physical person, and is part of matrimonial property, spousal approval is required. For preemption rights, see below.

Depending on the facts of the case, share deals (and asset deals, in some cases) may require merger control clearance.

2.5. Registration of change of ownership

In the case of share deals, the asset owner does not change, only the share owner, so the process is performed by registration of share transfer (on the basis of a (short form) share purchase agreement) in the Serbian commercial registry. Both notarization and registration are quite straightforward and do not involve material fees.

In the case of asset deals, as described above, the parties first need to solemnize their sale and purchase agreement, which is then immediately sent by the notary to the competent cadastral registry in order to perform the titleholder change. Notarization does not take time, however, registration with the cadaster can be time-consuming. As a general rule, the cadaster needs to decide on registration within five business days, but in practice, this can be protracted (sometimes heavily protracted). However, if, for the relevant asset, there is already a pending registration request (*e.g.* someone is trying to register a mortgage, or another person is trying to register its ownership title), the registration will be postponed until the pending request is resolved first. As stated above, notarial fees depend on the value of the transaction and may go up to several thousand euros. Cadastral registration fees are not material and they depend on various factors (*e.g.* number of relevant documents that serve as the basis for registration).

2.6. Risks to be considered

In a share deal, if there are other shareholders in the target owning the asset, who are not selling their shares, they have a statutory preemption right, unless such right was excluded via the foundation act.

In an asset deal, in case the asset is co-owned, each of the co-owners has statutory preemption rights. Further, in the case of agricultural land, owners of neighboring agricultural rights have statutory preemption rights. In the case of forests, if the forest is neighboring a state-owned forest, the user of the state-owned forest has statutory preemption rights. The state has statutory preemption right in respect to water land (except for water land on canals owned by the autonomous province – the province has preemption rights to such land). Further, in case of the first disposal of assets acquired via restitution (denationalization), the state/autonomous province/municipality has statutory preemption right.

There might exist also contractual preemption rights. However, if such right is not registered in the cadaster, and the buyer acted in good faith, he may benefit from the reliance principle (see above).

There are also certain statutory rights of neighbors or limitations in favor of the neighbor. Further, depending on the circumstances of the case, additional third-party rights may exist (*e.g.* statutory easements). Also, depending on the specifics of a case, additional restrictions or limitations may apply (*e.g.* in the case of cultural assets, assets located in national parks, assets in the proximity of infrastructural facilities, *etc.*)

In an asset deal, there is a general statutory rule that the seller

is liable if there is an entitlement of a third party to the sold asset that excludes, reduces, or limits the buyer's entitlements, of which the buyer was not informed, nor did he agree to take the asset burdened with such entitlement. The law further regulates the conditions for applying this rule. The general consequence when the third party's right excludes the right of the buyer is that the contract is deemed automatically terminated, and if it only limits the buyer, the buyer may choose whether to terminate the contract or to ask for a price reduction. In either case, the buyer is entitled to damage compensation. Given that the rule is rather general, the parties tend to develop it in more detail in their transaction documents.

In a share deal, given that the buyer is not buying the asset directly, but only the shares, it does not benefit from the statutory warranties regarding the title to the asset. Thus, the buyer will in general have as many rights vis-à-vis defective title to assets as it has secured for itself via transaction documents.

3. Real estate financing

3.1. Key sources of financing

Typically, real estate acquisition is financed from a combination of bank loans, shareholder loans, and own funding. Investment funding is not developed in Serbia, although there are foreign funds that are investing in properties in Serbia.

Although the general rules on loans are rather flexible, the regulations of the National Bank of Serbia play an important role. Things get more complicated in the case of cross-border loans, where registration requirements may apply, and potential foreign exchange restrictions need to be taken into account.

Shareholders' loans are also regulated under the *Companies Act*.

3.2. Protection of creditors

Financing banks usually consider mortgages and share pledges. Other forms of securities (*e.g.* bank account pledge, receivable pledge, pledge on IP rights, bills of exchange, *etc.*) are less common and are usually combined with these two. Financial assistance limitations need to be observed when taking securities, since in general, companies are prohibited to, directly or indirectly, provide financial assistance (including giving of loans, guarantees, securities, *etc.*) for the purpose of acquiring shares in that company.

4. Real estate taxes

4.1. Transfer taxes

In general, asset deals trigger property transfer tax of 2.5%. By law, the tax is to be paid primarily by the seller (with the buyer being jointly liable), but in practice, the sellers tend to contractually transfer this liability onto the buyer (in which case both buyer and seller remain jointly and severally liable vis-a-vis tax authorities). The tax base is the contract price or the market value (as assessed by tax authorities), whichever is greater.

Property transfer tax is not applicable if VAT applies. Further, the law sets a number of exemptions from this tax (*e.g.* in case of in-kind contribution into the share capital of a company).

In addition, depending on the facts of the case, the sale of real estate may trigger capital gains tax for the seller. The tax rate for natural persons is 15%, whereas for a legal entity the capital gains in relation to a real estate disposal is, in principle, to be included in the taxable corporate income. Laws stipulate the details of when and how this tax applies, as well as when withholding applies to such taxes. In the case the seller is a non-resident, double taxation treaties might be of relevance for capital gains tax application.

4.2. Specific real estate taxes

In general, ownership (or certain other entitlements) to immovable property entails payment of property tax. The tax base for persons who do not have bookkeeping obligations is the value of the property determined by the municipality, in accordance with various factors set by the law.

The tax rate is defined by each of the municipalities, within the following parameters:

- for persons who have the bookkeeping obligation – up to 0.4%;
- for persons who do not have the bookkeeping obligation, in respect to land – up to 0.3%;
- for persons who do not have the bookkeeping obligation, in respect to immovable property other than land:

a. if the tax base is up to RSD 10 million (approximately EUR 85,000) – up to 0.4%;

b. if the tax base is from RSD 10 million (approximately EUR 85,000) to RSD 25 million (approximately EUR 212,000) – the amount from point a. above plus 0.6% of the amount in excess of RSD 10 million (approximately EUR 85,000);

c. if the tax base is from RSD 25 million (approximately EUR 212,000) to RSD 50 million (approximately EUR 424,000) – the amount from point b. above plus 1% of the amount in excess of RSD 25 million (approximately EUR 212,000);

d. if the tax base is exceeding RSD 50 million (approximately EUR 424,000) – the amount from point c. above plus 2% of the amount in excess of RSD 50 million (approximately EUR 424,000).

Law prescribes further details as to the tax triggers, tax payor,

tax base, deadlines, tax returns, and other details related to property tax.

5. Condominiums

5.1. Legal framework for condominiums

Condominiums exist in Serbia in the context of residential buildings and their management (on a broad level, joint (and indivisible) ownership regime exists also on any building in respect to common areas and appliances, however, only in respect of residential building there exists detailed legislation regulating the matter). It is also envisaged under planning and construction regulations as a type of organizing within a closed residential block with common content in buildings and on the land (park, playground, *etc.*), jointly owned by all owners of separate parts of buildings within the complex. However, this type of condominium is underregulated. The following text in this point 5 thus refers to condominiums within residential buildings.

The Act on Residence and Maintenance of Buildings (*Zakon o stanovanju i odrzavanju zgrada, Official Gazette of RS, nos. 104/2016 and 9/2020*) is the key piece of legislation regulating this matter. If a building has more than one separate parts (*e.g.* apartments) owned by different people, the management of such building is entrusted to an association (a legal entity) formed by the owners of separate parts. Each association has an assembly and a manager, who are entrusted with different tasks related to building management. The role of manager can be outsourced to a professional. Maintenance obligations in relation to the building can also be outsourced.

5.2. Rights and duties of co-owners

Owners of separate parts (who, under the law, have joint ownership to common parts of the building and its appliances) are obliged to participate in costs of maintaining common parts of the building and the land for building's regular use, as well as in the costs of building management.

In addition to entitlements available under the general ownership laws, owners of separate parts of residential building are entitled to:

- exclusively enjoy property rights on their separate part (unless the law prescribes otherwise);
- perform repairs or other works on common parts of the building if necessary to eliminate the danger of damages to their separate part (provided the person liable for such repairs does it timely);
- modify or adapt its separate parts in accordance with the law, without affecting separate parts of other people, common parts of the building, or independent parts of the building (in each case, except if authorized to do so);
- contest decisions of assembly within 45 days from learning of the decision (and in any event within six months from the date the decision was rendered);
- right of first refusal (in accordance with the law), in case the common part of the building is to be transferred for purpose of annexing, transformation, or upgrade.

Owners of separate parts of residential building are obliged to, *inter alia*:

- not disturb the use of other separate parts by its use of its separate part;
- maintain its separate part in the state that does not make it harder, prevent, or cause a nuisance to regular use of other parts of the building;
- maintain common part of the building (which is an integral part of its separate part) to the extent he/she is able to use that common part;
- allow the use of common parts of building in accordance with their purpose and passage of third parties up to a separate part of a building; and
- allow access through its separate part or its use (as appropriate) if necessary to repair or maintain other parts of the building or to fulfill statutory duties.

5.3. Liability of co-owners

Owners of separate parts (inter alia) are obliged to maintain the building *i.e.* its common parts so as not to create a danger of damages. They are also obliged to maintain their separate parts in a manner that secures the functionality of that part of the building and eliminates the danger of damages or inability of using other parts of the building. They also need to comply with fire safety regulations and regulations related to flammable gases and liquids and minimum prevention measures related to evacuation of people and regular maintenance of fire detection and alarm systems and fire extinguishers. Regular and capital maintenance is to be performed in accordance with the maintenance program enacted by the owners' association.

If the owner of a separate part fails to comply with the aforementioned rules, it is liable for damages originating from its separate part, regardless of his/her fault.

The owners' association is liable for damages originating from common parts of the building, however, owners of separate parts are liable for such damages as well if the owner's association does not compensate the damages first.

Owners of separate parts are subsidiarily liable to third parties for the performance of obligations of the owners' association in case it fails to perform, as well as for the damages due to such failure.

5.4. Rights and duties of condominium associations

The owners' association is liable for damages due to failure to perform, or improper performance of tasks that are within its competence.

It is also liable for damages originating from a part of the building if it is not possible to determine from which separate part the damages originate (in such case, all owners of separate parts are subsidiarily liable as well).

6. Commercial leases

6.1. Form and contents of a lease agreement

The law does not prescribe any particular formal requirements for lease, so, even though in practice they are concluded in writing, theoretically, they can be concluded even orally. However, there are certain types of leases that require stricter form – *e.g.* lease of publicly owned land requires notarization, lease of apartments under the *Act on Residence and Maintenance of Buildings*, *etc.* Generally, any lease that is intended to be registered in the cadaster has to be in writing, notarized, contain the cadastral description of the property, and the permission of lease registration.

General rules of law do not require many elements to be included in a lease agreement – leased asset and rent would suffice. For certain specific types of leases, laws set mandatory elements that need to be added (*e.g.* for leases of publicly owned land). In practice, commercial leases tend to include more detailed clauses, this is especially so in *e.g.* large office buildings or shopping centers. These may include rules on fit-out, indexation of rent, security instruments, insurance, modifications of leased premises, details on utility costs and service charges, termination grounds, *etc.*

Given the relatively high demand for commercial leases, the lease agreements tend to be lessor-friendly. There are no widely accepted standard forms of leases. Large players (*e.g.* shopping malls, office buildings) tend to impose their detailed forms of agreements on tenants, and generally, small tenants are often left with a take-it-or-leave-it choice.

6.2. Regulation of leases

General rules on leases embedded in the *Obligations Act* apply to all types of property, however, there are specific rules for certain types of property (*e.g.* publicly owned assets, agricultural land, *etc.*), where additional rules, formalities, and procedural steps may apply.

72.Commercial leases, in the case they refer to private property and private landlord, do not have additional legal requirements than leases in general, and there are only a few rules that cannot be contractually excluded, such as landlord's exclusion of liability for material defects if the landlord knew of the defect and intentionally failed to inform the tenant on them, or if the defect makes impossible the use of the leased asset, or if the landlord imposed the exclusion via its monopolistic position. Also, the tenant cannot waive its right to terminate the lease in case the leased assets present a threat to health. However, even though there is vast room for departing from the default statutory rules on a lease, it is a general principle that the parties' autonomy has to remain within mandatory laws and regulations (note that there are mandatory provisions even within the *Obligations Act* that apply in general, not just in relation to leases), public policy, and good customs.

6.3. Registration of leases

A commercial lease does not need to be registered in order to be effective. However, if the tenant wishes to be protected from eviction in case of enforcement over the property, the lease needs to be registered prior to any mortgage or enforcement order registration. In practice, commercial leases are rarely registered.

6.4. Termination of leases and renewals

Fixed-term leases cannot be terminated without cause unless the parties stipulated otherwise.

In case of indefinite term leases, either of the parties may terminate the contract for convenience with a notice. If the notice period is not set by contract or law or local customs, the notice period is eight days. Such termination cannot be ill-timed.

Both fixed-term and indefinite term leases can be terminated for breach. In practice, the parties tend to specify termination grounds. In absence of any other contractual arrangements, the following lease termination provisions apply:

Under the default provisions of law, the landlord can terminate the lease if:

- the tenant, despite the landlord's warning, uses the leased asset contrary to the contract or its purpose or neglects its maintenance, so that there is a risk of damages to the landlord;
- the tenant fails to pay the rent within 15 days from the landlord's request for payment (but the lease will survive if the rent is paid before the termination notice is communicated to the tenant); or

- the tenant subleases the asset, provided that the sublease requires the landlord's consent provided further that such consent is required under contract or law.

Under the default provisions of law, the tenant may terminate the lease if:

- the necessary repairs of the leased asset interrupt its use to a significant extent and for a longer period;
- at handover, the leased asset has a defect that cannot be eliminated;
- the asset is defective and the defect can be eliminated without significant inconvenience for the tenant, and the handover date is not a material element of the lease, and the landlord fails to eliminate the defect in the remedy period set by the tenant;
- a third party has an entitlement to the leased asset that limits or completely excludes the right of the tenant to use the asset; or
- the landlord's title to the leased asset is transferred.

General termination rules that apply to all contracts (*e.g. rebus sic stantibus*) may also apply to leases if conditions for their application are met.

If the leased asset is destroyed due to force majeure, the lease ceases to exist automatically. If it is only partly destroyed or just damaged, the tenant may opt to terminate the lease.

6.5. Rent regulations and rent reviews

There are no rent control regulations in relation to commercial leases, so parties are free to agree on the rent, bearing in mind the general principles of obligations. In the case of lease of publicly owned assets, various constraints may apply (the general principle for leasing publicly owned assets is that the rent has to be market-based, but there are exceptions to this rule).

In commercial leases, rent review clauses or indexation clauses are not a must, but indexation is regularly agreed upon between the parties in practice. In the case of lease of publicly owned assets, depending on the type of assets and lease, indexation may be a mandatory element of a lease.

6.6. Services to be provided together with the lease

By default provisions of law, the landlord is obliged to maintain the leased asset in proper condition and undertake necessary repairs to that end (costs of minor repairs caused by regular use of the asset, as well as the costs of the use are borne by the tenant). In commercial leases, however, parties tend to agree on a wider spectrum of services the landlord would be providing against the tenant's payment of a service charge.

6.7. Fit-out works and their regulation

General rules on lease do not regulate fit-out, so it remains on the parties to agree whether and under which conditions fit-out will be done. In commercial leases, fit-out provisions are quite standard, but their content varies, in terms of *e.g.* who will do the fit-out, who will bear the costs, *etc.* Depending on the facts of the case, fit-out may have VAT implications.

6.8. Transfer of leases and leased assets

In general, for the lease to be transferred, consent of the counterparty is required (unless such consent was provided in advance). However, the law foresees a specific situation of lease transfer in case of transfer of the leased asset: if, after the handover of the leased asset to the tenant, the landlord transfers its title to the leased asset to a third party, the lease agreement is automatically transferred to the acquirer, whereas the original landlord jointly and severally guarantees to the tenant for the acquirer's obligations from the lease. In this case, the tenant is entitled to terminate the lease with notice, but in commercial leasing practice, landlords tend to have the tenants waive this entitlement.

I'd like to thank BDK Senior Partner Dragoljub Cibulic for his valuable critique on this chapter.

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