



LEGALINK

INTERNATIONAL BUT PERSONAL

GUIDELINES FOR INVESTMENTS IN **REAL ESTATE**

2019



INTRODUCTION

The world has changed a lot since we launched the 2nd edition of this book in 2012 with an overview regarding Investments in Real Estate all over the world.

In recent years the world has faced some difficult situations not only in the political, but the economic world. We face a crisis in the EU with the never-ending Brexit discussion over the last two years. Some important political leaders, both inside and outside of the EU, seem to lack the ability to carefully listen to others or take diverse views into account and sacrifice compromise and “win-win” solutions on the altar of egoism. Such attitudes jeopardize not only the political but the economic relationships between countries, and disrupt the balance needed for good relations over the long term.

In these times it is very important to have personal contacts and friends in the world you really can trust, who are familiar with the laws in their area. Our Legalink network, which is grown internationally over the last 25 years, is exactly what is needed these days, because our prominent experts in the network know each other personally from attending at least two meetings a year. At our conferences, therefore, we meet as friends, and not just as lawyers.

In uncertain political times many people look to diversify their investments into safe havens, but still want something more than the interest banks pay on simple monetary investments, which do not even keep pace with the inflation rates in most countries. Therefore, in addition to investments in the stock markets, we see not only in Germany, but in other stable economies throughout the world, substantial investment in real estate, with accompanying increases in prices. Such price increases, however, while seemingly rewarding the investor, make it more necessary than ever before to carefully evaluate the long-term viability of investments in the real estate market, keeping in mind that history shows that if investments are professionally reviewed and professionally executed, then most are ultimately successful.

We are very happy to have in our growing Legalink network, which has more than 3000 lawyers in about 70 independent law firms located in most business centers on all five continents, recognized experts in the field of real estate acquisition and finance. These lawyers are ready to advise and assist investors in all aspects of investments and transactions involving residential and commercial real estate, and all other real property issues, as well.

From working together on cross-border projects in our network and in discussions with our clients, we found that many of them, as well as other potential investors, would like to receive an introduction to the rules governing investing in real estate throughout the world, as well as other aspects that have to be taken into account in real estate transactions. In this 3rd edition of our book we are pleased to give potential investors a first overview of various factors which must be considered when investing in residential or commercial real estate in many countries of the world in which they might be interested. Of course, every single transaction is unique and the laws and tax aspects of it must be reviewed in detail by specialists.

You will find contact data of the firms within this book and on the website of our Legalink network (www.Legalink.ch). All firms are pleased to assist in this field and will give you professional advice.

If you require a cross-border analysis of diverse law aspects, a joint effort to facilitate a cross-border transaction, or if you have any questions concerning how our network can get you the most advantageous solutions for investments in commercial real estate, please do not hesitate to contact us. We will be happy to refer you to the specialists of our network who can best assist you in your case.

Berlin, October 2019

Markus Jakoby
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Berlin, Germany

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BULGARIA VARADINOV & CO. ATTORNEYS-AT-LAW

I. Procedure of a real estate transaction

1. Could you give a short outline with regard to the formal procedure of a real estate transaction in your country, starting from the signing of the purchase agreement (including the closing) until formal ownership vests in the purchaser?

According to Article 18 of the Bulgarian Obligations and Contracts Act (OCA), the agreement for real estate transaction should be done as a title deed, signed before and certified by a public notary. This legal stipulation is a mandatory one and the form set in the law is for the validity of the transaction. The sale-purchase agreement is envisaged in Article 183 and following of the OCA, as well as in Article 318 of the Commerce Act (in case the transaction is a commercial deal). Bulgarian legislation provides that a transaction shall not be deemed as a commercial deal when the object of the sale is for a personal usage and the buyer is an individual (not a company).

In order to perform the formalities related to the deal at the notary's office, the parties have to appear before the notary to sign the title deed. The notary public acting in the area where the property is located shall have the respective jurisdiction. The notary public may not execute notary actions outside his/her region. The issuance of notary acts which are subject to entry at the official property register shall be carried out only in the office of the notary public during the working hours. The seller must submit to the notary the original documents evidencing the ownership right over the property. The notary will verify whether the property is located within the area of his/her jurisdiction. He/she will also verify the identity, capacity and representative power of the persons appearing to him/her. The notary will verify that there are no legal impediments to the transfer of the property, that the presented draft title deed meets the legal requirements and that the seller is the actual owner of the real estate.

According to the Article 580 of the Civil Procedural Code (CPC) the notary act (title deed) shall contain:

- The year, month, day and, where it is necessary, also the hour and the place of its execution;
- The name of the notary public executing it;
- The full names and the personal identification numbers of the persons who participate in the procedure, as well as the number, date, place and authority which issued their identity documents;
- The content of the act;
- Short note of the documents, certifying the presence of the mandatory legal requirements of CPC (above described);
- The signatures and full names of the parties or their proxies in writing and a signature of the notary public.

The notary shall read to the participating persons the content of the act. If they approve it, the act shall be signed by them before the notary public, and if it has already been signed, they shall write their full names and confirm their signatures. In case any of the participating persons cannot sign because of illiteracy or any disability, the CPC envisages some special rules (Art. 189 CPC). The title deed shall be signed by the notary public too. When it is necessary to make any amendments, supplements or abbreviations in the act, an explicit note to that effect shall be made, that shall be signed as the act itself. On the day of the performance of the formalities related to the deal, the notary shall present the title deed

before a property registrar at the registry agency in the registry office where the real estate is located. The Judge of Registration shall order the registration of the deed in the property register at the registry agency, which ensures and protects the rights of the buyer in case of possible claims of third parties. Following the completion of the entry, the buyer shall have every right to dispose with mortgages, rentals, sales etc. The entry of the title deed at the property register shall bring the transaction to its end.

After completion of the real estate transaction, the buyer shall declare the new property, filing a tax declaration levying an annual state tax. The declaration shall be filed at the local taxes and fees department at the municipality where the property is located. In case of purchase of a building under construction, the owner shall also apply to obtain a use permission and then shall declare the property within two months.

Documents which should be presented at the notary office in order for the deal to be certified:

- A written request addressed to the notary public to initiate a notary procedure;
- Documents regarding the ownership rights of the seller, such as notary title deeds, sale and purchase agreements with respect to state or municipality property, court or voluntary partition, court resolutions etc.;
- Extract of the cadaster plan or scheme with regard to the property in sale;
- tax certificate of the property in sale, issued by the municipality where the estate is located;
- Written declaration signed by the seller for lack of public obligations for taxes and social security payments;
- Declaration regarding the citizenship and the civil status of the parties;
- Incumbency certificate with respect to the property in sale, issued by the registry agency;
- Document regarding paid local state tax;
- Other documents as the case may be – for example, an extract from the relevant architectural plan, an inheritors' certificate, a notary-signed authorisation in case the party is acting by a proxy, a civil marriage certificate, a marriage status certificate etc.

2. Does your legal system permit different sorts of ownership, like ownership of the whole land and construction or ownership, for example, only of one unit or lots of units (condominium) of the improvements?

Bulgarian legislation regulates different sorts of ownership such as ownership of the whole land and the construction as well as ownership of only one unit or several units. The law envisages special rules for management of buildings in condominium ownership. Public relations related to the management of the common parts of such buildings and the rights and obligations of owners, users and occupants of individual units or parts thereof are regulated under the Condominium Ownership Management Act (COMA).

Special management regime of the common parts of buildings under condominium ownership arrangements is introduced for buildings constructed in closed-type residential complexes. The management may be arranged either under the COMA (general meeting of the owners), or by a written contract with notary-certified signatures entered into by and between the investor and the owners of the individual units. The contract shall be registered by the investor in the registry agency on the lot of each individual unit and is referenced to the subsequent purchasers. Exceptions to the management

of the common parts of building under condominium ownership arrangements are introduced for buildings containing up to three independent units belonging to more than one owner. In these cases, the provisions of the Ownership Act regarding the joint ownership shall be applicable.

3. Does the legal system of your country permit joint ownership of real property? Which kind of entities can be owner of real property in your country?

Bulgarian legislation permits joint ownership of real property. The relevant legal act is the Ownership Act (Articles 30-36). The law envisages that the right of ownership may belong jointly to two or more persons – the state, municipalities and other corporate bodies and individuals. The shares of the persons shall be deemed equal until proven otherwise. Each joint owner shall participate in the benefits and burdens of the common property in proportion with his share.

Each joint owner may use the common property in accordance with its purpose and in such manner as not to interfere with the other owners' use according to their rights. When the common property is used personally only by some of the joint owners, they shall owe compensation to the other joint owners for the benefits of which the latter are deprived from the date of a written request.

The common property shall be used and managed in accordance with the decision of the joint owners owning more than half of the common property. If a majority cannot be formed or if the majority's decision is damaging to the common property the regional court, at the request of any of the joint owners, shall settle the issue and take the required measures and, if necessary, appoint an administrator of the common property.

A joint owner may sell his share of the immovable property to a third party only after presenting a proof in writing to the notary public that he has made an offer to the other joint owners to purchase the said share under the same conditions and declaring in writing that none of the said joint owners has accepted the offer. If the declaration is false or if the third party purchases the joint owner's share under conditions agreed fictitiously to the detriment of the other joint owners, the interested joint owners may purchase the said share under the really agreed conditions. The action must be brought within two months of the sale. Where a joint owner has not paid the due sale price within one month of the entry into force of the court decision, the said decision shall become null and void *ex lege* (Article 33 of the Ownership Act).

Each joint owner may, despite agreement to the contrary, ask for a partition of the common property, except where the law provides otherwise or if this is incompatible with the nature and purpose of the property.

According to the Bulgarian legislation, an owner of a real estate may be an individual, a legal entity (a company), the state, the municipality etc.

4. In some countries the ownership of a building is implied in the ownership of the land. Is it this way in your country as well, and/or is it possible to have different owners of the land and the building erected on it?

The Bulgarian Ownership Act permits different owners of the land and the building on it to exist (Article

63). The owner may transfer to another person the right to construct a building on his land, whereby the other person becomes owner of the building. The owner of the land and the building on it may also transfer, independently from the land, the ownership of an already existing building. Ownership of a building independently from the relevant land under it may also be created by a voluntary partition.

The owner of a building may use the land to the extent that is necessary for the use of the building according to its purpose, unless the act with which the right is ceded contains another provision.

When the right of use of a building is created with a fixed time period, after the expiration of said period the ownership of the building shall pass gratuitously to the land owner.

The owner of the building (only) may sell it to a third party and the provisions of Article 33 regarding the joint ownership shall be applied *mutatis mutandis* (Article 66 of the Ownership Act).

The right to construct a building on another's land (Art. 63, para 1) shall be extinguished in favour of the owner of the land through limitation if it is not exercised within five years.

5. Is the land and/or the building registered in a formal register, and is a good-faith purchaser protected with regard to the entries in this formal register?

In order to be completed, each real estate transaction shall be registered with the property registrar at the registry agency. Articles 112 and 113 of the Ownership Act shall be applied. The good-faith purchaser shall be protected upon entering of the transaction in this formal public register. Sale and purchase transaction title deeds, prior to their recording in the official property register, may be defeated by third parties who have earlier acquired from the same owner and recorded real rights over the same real estate.

II. Financing tools of the transaction

6. How do investors finance the transaction? Are mortgages the typical way of coverage for banks?

In the last two years (2017-2018) the usual way of financing a real estate purchase is on a cash basis and/or on bank credit for approximately 50% to 70% of the purchase price. The bank credit shall be very often secured by a mortgage over the real estate in sale, by pledge of company shares, receivables and/or equipment, by promissory note(s), personal guarantees etc. These bank securities shall be given by the buyer himself or by a third party, or both.

7. What should be taken into account when thinking about the financing of a purchase project in your country?

First of all, it is very important that the ownership of the seller be researched in detail. This may be done by the notary public, but usually it is the lawyer who shall examine the property's history and current status. The next step is a financing of the transaction to be negotiated and provided. If the buyer will not pay the whole amount for the real estate's price at the moment of signing of the notary deed, it is very likely a preliminary sale purchase agreement to be signed. It should be in writing. No notary certification of the signatures of the parties is required. The preliminary sale purchase agreement provides all the core clauses of the notary deed to follow, but the preliminary agreement does not transfer any property/ownership rights. Each of the parties might claim before court the preliminary agreement to be announced as a final agreement and, if this is the case, the transfer of ownership shall be effective by the court ruling and not by a notary deed.

III. Costs for transaction

8. What tax aspects are directly involved in a purchase of real property – for example, real property transfer tax – and what is the percentage of it?

The costs incurred during the sale of a real estate property under the provisions of Article 186 of the OCA shall be shared in equal parts between the parties, unless otherwise agreed in a written agreement. The following fees shall be paid upon the performance of the formalities of the deal at the notary's office:

- Notary fee calculated as per the Notary Fees Tariff on the certified pecuniary base of the deal (in case of difference between the tax evaluation and the sale price, the higher amount shall be applied). The maximum of this fee shall be to the amount of BGN 6,000 (€3,068) + 20% VAT;
- Fee for the registration of the title deed with the property registrar at the registry agency, amounting to 0.1% of the certified pecuniary base of the deal (not less than 0.1% of the tax evaluation of the property);
- Local state tax amounting to 3% of the certified pecuniary base of the deal. The specific tax rate for each municipality shall be determined by its municipal council. For example, the local state tax for Sofia for 2019 is to the amount of 2.5% of the deal price;
- As the case may be, some additional charges may be required to be paid, such as a remuneration to the real estate agent (determined by negotiations, usually up to 2% to 3% of the sale price; remunerations to lawyers or other consultants, for example construction consultants etc.);
- State fees with regard to check-ups of the property at the registry agency, certificates, etc. (under BGN 200/ €102);
- There may be some additional fees in case, for example, a mortgage shall be entered over the property in sale. If the deal price is up to €5 million, the fees for a legal mortgage shall be approximately up to BGN 13,700 (€7,005) and, for a voluntary mortgage, up to BGN 17,300 (€8,845).

9. Do you have to hold the property for a specific time with respect to tax reasons or is it in this context no problem to buy and sell property on a short-term basis, for example within a year?

Generally, no. According to the Bulgarian Income Taxes on Individuals Act, the state tax due by the seller of a real estate shall be to the amount of 10%. The law envisages some exceptions to the rule. In case the deal is for one real estate for residential usage, and provided that more than three years have passed since the date of the acquisition, then the income from the transaction shall be non-taxable. The same shall apply also for the income incurred from the sale of two real estates (possibly a house and the plot under it), as well as for agricultural and forest estates, regardless of their number, provided that at least five years have passed since the date of their acquisition.

10. Can the seller get his money out of your country after the transaction (repatriation of funds)?

Yes, the seller may get his money out of the country. Before that, he has to pay all his public duties and obligations due to the state and/or municipality, of course.

11. If you buy real estate that is leased to one or more persons, are you allowed to terminate the lease contract(s), or which restrictions have to be taken into account?

The Obligations and Contracts Act provides that in case of a transfer of the leased real estate, the lease agreement shall remain valid with respect to the transferee if it has been registered with the property registrar at the registry agency.

A lease contract concluded before the transfer of the property which has an authentic date (for example, a notary-certified one) shall be binding upon the transferee for the term stated therein, but not for longer than one year from the date of transfer. If it does not have an authentic date and the lessee is in possession of the property, the contract shall be binding upon the transferee as a lease contract for an indefinite term.

The lessor shall be liable for compensation to the lessee if the latter is deprived of the use of the leased property prior to the expiration of the term of the lease agreement, this deprivation being due to the transfer of the property (Article 237 OCA).

12. Are you allowed to change the use of a building from residential use to office space or vice versa? Do you need official approval for doing so, or is it not allowed at all?

In case the owner wishes to change the use of a building from residential to office space or vice versa, a special administrative procedure shall be carried out. The applicable legislative act shall be the Spatial Development Act (SDA). There are stronger requirements regarding change of use from residential to health service or dental centre. Special procedures shall be performed. The use of a real estate shall be important also with regard to the declaring of the property at the National Revenue Agency.

13. To get a feeling as to the amount of costs involved, what costs should be taken into account if a foreign investor bought an existing building (and land) for a purchase price of €5 million, particularly

- notarial costs?
- land register?
- real property transfer tax?
- advising lawyer (due diligence)? – estate agent?
- others?

Generally, the market expert's advice is to think of 10% when it comes to total amount of costs related to a real estate transaction.

In case the real estate transfer price shall be to the amount of €5 million (BGN 9,779,150) and the property is located in Sofia, the costs shall be approximately as follows:

- Local state tax (2.5% of the price) – BGN 244,478.75 (€125,000.00)
- Registry Agency fee (0.1%) – BGN 9,779.15 (€5,000.00)
- Notary fee (maximum BGN 6,000) – BGN 6,000 (€3,067.75)
- VAT over the notary fee (20%) – BGN 1,200 (€613.55)
- Bank commissions – approximately BGN 2,542.58 (€1,300.00)
- Total: BGN 264,000.48 (€134,981.30)

The fees due to lawyers and/or a real estate agent/agency shall be determined by a mutual written agreement between the parties. They are approximately 2% to 3% of the transaction price for lawyers and the same for real estate agents.

IV. Costs for holding real estate

14. What tax aspects are directly involved when holding a property – for example, yearly land tax after the transfer of ownership – and what is the percentage of it?

A property tax and a 'waste management' fee shall be due on annual basis. Taxable persons shall file a tax declaration within two months following the acquisition of the property. Later on, a declaration shall be filed only in case of changes in the circumstances declared – for example, when the building is partially or totally destroyed; the real estate has changed from taxable into non-taxable or vice versa; the property has become or ceased to be a primary residence; improvements have been made in the property that will alter the tax evaluation etc. The local state tax and the 'waste management' fee shall be paid to the account of the respective municipality, depending on the location of the property.

For 2019, the property tax rate in Sofia city is 1.875 pro mile from the tax evaluation of the property. The waste management fee for residential properties is 1.6 pro mile from the tax evaluation.

The amounts due for the property tax shall be notified to the taxable persons and shall be payable in two equal instalments within the following deadlines: first instalment from 1st March to 30th June, and the second one until 30th October of the year for which the tax is due.

The manner of payment of the 'waste management' fee shall be determined by the municipal council. The municipality shall notify the taxable persons of the respective period and payment deadlines. The fee may be paid in a different number of instalments, depending on the method adopted in the relevant municipality. It is usually acceptable to pay in two or four equal instalments within a year.

15. What are the costs you have to calculate as a foreign investor, if you engaged a professional caretaker for the purchased property? How does the caretaker normally charge for their work?

The costs shall be fixed in the individual agreement concluded by and between the owner of the real estate and the caretaker. The price shall depend on the property size and value, its location, the duration of the agreement, the liabilities of the caretaker etc.

V. Foreign investors

16. Would you advise foreign investors at the moment to invest in your country

- directly in real estate?
- through real property funds, open or closed ones?
- through other clear and secure financial products?

In 2017-2018 Bulgaria registered a record high amount of investment deals. 70% of the total volume was attributable to the sale of shopping centres. International buyers outpaced Bulgarian investors in terms of share of all deals, with South African investors having 71% of the total volume of deals.

As of 2017, the Bulgarian real estate market is getting better and the property demand is gradually increasing. This is true especially for the city of Sofia and the region. We would advise a foreign investor to buy a real estate in our country directly or via a company. Of course, there are property funds and

other financial products acting on the real estate market.

17. Is any individual person and legal entity allowed to buy property in your country, or are there restrictions with regard, for example, to nationality or registered office of legal entities? If there are restrictions, are there ways to organise a domestic entity for the purchase on a valid legal structure notwithstanding?

In Bulgaria, foreign citizens and foreign companies can directly acquire buildings, unit(s) within a building and limited property rights (for example construction right, right of use etc.). As a result of the accession of Bulgaria to the European Union (EU), specific rules related to acquisition of land were provided for EU citizens ('resident citizens') and entities registered in the member states of the EU and the European Economic Area ('EU residents and entities'). Relevant changes were implemented in the Bulgarian Ownership Act, Forestry Act, Protected Areas Act and Agricultural Land Ownership and Use Act.

According to the applicable legislation, EU residents and entities may acquire ownership title over land in Bulgaria in accordance with the requirements specified by law and in compliance with the provisions of the Accession Act of Bulgaria to the EU. The Accession Act provides that Bulgaria, upon its discretion, can keep the restrictions for acquisition of land by citizens and entities from the member states: (i) for five years starting from 1st January 2007 for the land provided for second residence, and (ii) for seven years starting from 1st January 2007 for agricultural land, forests and forest land.

The five-year transitional period (i) expired on 31st December 2011. Therefore, EU residents and entities can now acquire urban land in accordance with the requirements specified by law. Citizens ('non-resident citizens') and entities of countries not members of the EU and the EEA may acquire ownership title over land under the terms of an international agreement ratified under the terms provided for in the Constitution of the Republic of Bulgaria, which agreement has been promulgated and entered into legal force.

The seven-year period (ii) expired too. In the middle of 2014 some amendments were made in the Agricultural Land Ownership and Use Act (Article 3c). The law envisages that individuals and legal entities who have been resident or established in the Republic of Bulgaria for more than five years may acquire right of ownership over agricultural land.

The same legal act also provides that legal entities (companies) with registrations under Bulgarian law of less than five years may acquire right of ownership over agricultural land if the partners in the company meet the requirements under the previous paragraph.

Foreigners (non-resident or resident citizens) may acquire ownership title over land in case of legal succession. In case of inheritance through legal succession of agricultural land, forests or forest land, if the foreigners do not fulfil the conditions provided for in the Accession Act of Bulgaria to the EU, or when something else is not provided for in an international agreement, they shall be obliged, within three years following the revealing of the inheritance, to transfer the ownership to persons who have the right to acquire such estates.

Indirectly, foreign companies and foreign citizens may acquire any type of real estate, including urban land, by registering a Bulgarian company to act as a buyer. It is possible for such a company to be 100% owned by a foreign investor. Another possibility for an indirect acquisition of a real estate in Bulgaria by a foreign company or a foreign citizen is to buy the shares in the capital of an already existing Bulgarian

company, which then may act as a buyer of the real estate. Foreign companies and foreign citizens, furthermore, can acquire the shares in the capital of a Bulgarian company which already owns a real estate in Bulgaria.

18. If a foreign investor buys a plot of land in your country to run a business there, what kind of official approvals are needed, and what time and effort are needed normally to get it?

The terms and conditions under which nationals of other member states of the EU and their family members, as well as nationals of the member states under the EEA Agreement and the Swiss Confederation and their family members enter, stay and leave the country are governed by the EU Citizens and Member of Their Families Entry, Residence in and Departure from the Republic of Bulgaria Act (EU Citizens Act). EU citizens may enter and reside in the country up to three months without visa, with a valid identity card or passport. After that period, they have to obtain a certificate of long-term or permanent residence of EU citizen. In order to obtain such a certificate, they shall file an application to the Migration Department at the Ministry of Interior. The requirements of the EU Citizens Act shall be met.

The terms and conditions under which nationals of states that are not members of the EU (third states) may enter, stay and leave the country are stipulated in the Foreigners in the Republic of Bulgaria Act (The Foreigners Act). A foreigner may enter the country if he/she has a valid personal travel document and visa, if required. No visa is required where this is stipulated in Regulation (EC) 539/2001 of the Council, in other relevant EU acts, in international treaties to which Bulgaria is a party or in any act of the Council of Ministers. No visa is required where the foreigner is a holder of a valid permission for continuous, long-term or permanent residence in the Republic of Bulgaria. Foreigners who own property in the country and who wish to reside in the country may apply for a short-term visa for the purpose of intended stay of no more than three months in any six-month period from the date of their entry in the country. For more information and visa application procedures, please visit the website of the Bulgarian Ministry of Foreign Affairs on www.mfa.bg.

19. Could your firm assist foreign investors in

- Finding interesting real estate and related valid investment products in real property in your country where required through personally known estate agents and other advisers?
- Developing construction projects?
- All legal aspects involved in these contexts?

Our firm, Varadinov & Co. Attorneys-at-law, may render to the client legal services regarding all legal aspects involved in investment and real estate transactions, starting from finding interesting real estates, consultations with respect to the appropriate investment products, structuring of the deal and assisting in construction projects, including assistance during the implementation of the whole procedure at the notary public's office and the transaction closing and advice on the respective tax effects.

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