

GETTING THE
DEAL THROUGH 

Real Estate 2016

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Slovakia

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General

1 Legal system

How would you explain your jurisdiction's legal system to an investor?

Slovakia has a civil law system. The fundamental pieces of Slovak private law are the 1964 Civil Code and the 1991 Commercial Code. The former codifies general private law principles, such as acquisition or transfer of ownership, liability for damages and contracts. The latter focuses on regulation of business-to-business relationships.

Although judicial precedent law is not absolutely binding, the legal certainty principle requires that identical cases are decided identically.

Oral contracts are enforceable. However, most contracts relating to real property are enforceable only upon execution of a written deed and its registration (perfection) in the land register (Cadastral Register). Amendments to a written contract relating to real property must also be in writing. In general, parol evidence is admissible unless it alters the unambiguous contents of a written contract.

Civil court proceedings are based on a partially adversarial trial system. Parties may provide evidence supporting their claims, however, a court will also seek evidence in order to reliably establish the facts. Applicants may apply for injunctive relief for various actions, such as prohibiting a property transfer or an eviction.

2 Land records

Does your jurisdiction have a system for registration or recording of ownership, leasehold and security interests in real estate? Must interests be registered or recorded?

Slovak real property law is based on the registration principle. Subject to certain exemptions, only an owner or holder of other property rights who is registered in the Cadastral Register is the rightful owner of real property or the holder of such property rights. Unregistered or unrecorded owners enjoy limited or no protection. Real property is registered in the Cadastral Register. The Cadastral Register is administered by district offices. All title transfer deeds and other legal deeds are deposited in the Cadastral Register. The Cadastral Register is not public and access is allowed only to certain public authorities and the respective owners of real property. For historical reasons, the Cadastral Register often contains only deeds from the early 1990s.

The Cadastral Register provides information on ownership, co-ownership and encumbrances. Registration of long-term land leases with a term over five years is optional. The Cadastral Register may also contain information on pending court and enforcement proceedings. Information extracts from the Cadastral Register are publicly available free of charge. Official extracts can be obtained for a fee at the relevant district office.

Individual ownership is evidenced on a deed of ownership. Subject to certain exemptions, every owner has one deed of ownership covering all of his or her real property owned individually and located in the respective cadastral area.

The principle of authenticity and publicity applies to information recorded in the Cadastral Register. Information in the Cadastral Register is considered reliable unless proven otherwise. Accordingly, a purchaser

cannot claim that a property was purchased in good faith if a title defect could have been identified by a review of the relevant deed of ownership.

3 Registration and recording

What are the legal requirements for registration or recording conveyances, leases and real estate security interests?

The same rules on registration of real property apply throughout all regions of Slovakia. Written contracts conveying title or establishing other property rights to real property must comply with the relevant codes and the 1995 Cadastral Act. In particular, contracts must be prepared in Slovak or Czech or officially translated. The signatures of sellers or obligors for pre-emption rights or easements must be officially verified unless the contract is in the form of a notarial deed or authorised by a Slovak licensed attorney. The district office reviews contracts' compliance with statutory requirements in the registration procedure.

The registration fee for a normal 30-day registration is €66. This fee is reduced by 50 per cent if it is applied for electronically. Parties may request an accelerated 15-day registration for an extra fee of €266.

The Cadastral Act does not specify which party is obliged to pay the fee. However, as a matter of practice, it is customary for the purchaser to pay.

Certain rights and obligations may be established through the passage of time (acquisition of title by usucaption (prescription), administrative or judicial decision regarding expropriation or judicial determination of title or sale at auction. These events or decisions are registered in the Cadastral Register (in this case, registration having only evidentiary effects) free of charge.

The real property transfer tax was abolished in 2004. There is no stamp duty. Owners of real property are subject to municipal real property tax depending on the type and location of the property.

4 Foreign owners and tenants

What are the requirements for non-resident entities and individuals to own or lease real estate in your jurisdiction? What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

Generally, foreign corporations and individuals can freely acquire or lease real property in Slovakia without further registration, permission or licence not otherwise required by Slovak residents.

The acquisition of farmland is regulated by the 2014 Acquisition of Farmland Act. The Act was adopted to address certain political concerns to protect domestic farmland ownership resulting from the expiration of the applicable transitional period agreed in the EU Accession Agreement. At present, the constitutionality of the Act is being reviewed by the Slovak Constitutional Court.

The 2014 Acquisition of Farmland Act prohibits acquisition of farmland by a foreign national if the acquirer's domestic laws prohibit acquisition of farmland by a Slovak national in the respective jurisdiction. This restriction on reciprocity, however, does not apply to EU and EEA member states and Switzerland. Another impediment to acquisition of farmland is the procedure obliging a seller to first offer the farmland to Slovak farmers.

A foreign acquirer can only purchase the farmland after the official offer is made and declined or ignored. The seller must offer Slovak farmers the farmland on the same terms as the foreign entities. The full tender procedure lasts over six months. These restrictions do not apply to farmland located in developed municipal areas or to farmland less than 2,000 square metres.

5 Exchange control

If a non-resident invests in a property in your jurisdiction, are there exchange control issues?

Foreign investors, after payment of all taxes and other levies, are free to repatriate profits from Slovakia. There are no exchange control limitations with respect to real property and all domestic and foreign investors (including investors from jurisdictions outside the EU) are treated equally. However, certain foreign exchange transactions must be notified to the National Bank of Slovakia.

6 Legal liability

What types of liability does an owner or tenant of, or a lender on, real estate face? Is there a standard of strict liability and can there be liability to subsequent owners and tenants including foreclosing lenders? What about tort liability?

There are two types of liability in Slovakia. First, a party is liable for a breach of its statutory obligations, which includes also the general obligation to take preventive action to avoid damage. Under the rules of statutory liability, the owner of real property may be liable for any damage, including bodily injuries, caused to third parties on such owner's property if the owner violated its statutory duty of care and maintenance of the property. Second, a party is liable for breach of its contractual obligations.

Pursuant to case law, a person is liable for damages that are the direct and immediate consequence of such person's illegal conduct. Accordingly, courts are reluctant to acknowledge damage compensation to subsequent owners or tenants.

Real property owners must refrain from disturbing their neighbours by emissions, noise, vibrations or by otherwise impeding neighbour's ownership rights in a way exceeding normal conditions. Buildings must comply with technical requirements. The owner is liable for direct and immediate damages resulting from a breach of this duty.

In general, a polluter is liable for removal of the pollution or contaminants at his or her own expense.

7 Protection against liability

How can owners protect themselves from liability and what types of insurance can they obtain?

Various insurance instruments are available in Slovakia, including building insurance, environmental liability insurance and all-risk property insurance. Investors may protect themselves by incorporating a Slovak entity with limited liability. Legal and technical due diligence and properly drafted transaction documentation may also reduce the buyer's risk.

8 Choice of law

How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction? Are contractual choice of law provisions enforceable?

Parties to a transaction may choose any governing law. However, rights to Slovak real property, including the form of contracts related to real property, must be governed by Slovak law. Ancillary provisions of the contract, such as payment conditions or other arrangements between the parties, may be governed by any law.

9 Jurisdiction

Which courts or other tribunals have subject-matter jurisdiction over real estate disputes? Which parties must be joined to a claim before it can proceed? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

Slovak civil courts have exclusive jurisdiction over in rem rights relating to Slovak real property. Only Slovak civil courts may hear real property lease disputes. Civil courts are organised into district courts (authorised to adjudicate almost all disputes), regional courts (generally serving as appellate courts) and the Supreme Court. A court must provide each party with an opportunity to represent its interests pursuant to the principle of effective judicial protection. Foreign service of process is governed by applicable international law and treaties.

Slovak law acknowledges the legal capacity of foreign persons. Foreign persons may use all legal remedies available to Slovak persons to enforce remedies in Slovakia.

10 Commercial versus residential property

How do the laws in your jurisdiction regarding real estate ownership, tenancy and financing, or the enforcement of those interests in real estate, differ between commercial and residential properties?

The regulation of ownership and financing does not differ between commercial and residential premises. Conversely, the regulation of residential property lease is more advantageous to tenants in that it stipulates a limited scope of a landlord's ability to terminate the lease and permits the tenant to terminate the lease for any reason upon notice.

11 Planning and land use

How does your jurisdiction control or limit development, construction, or use of real estate or protect existing structures? Is there a planning process or zoning regime in place for real estate?

Since real estate projects have a great impact on the public, they are rigorously regulated by the 1976 Construction Act, 2006 Act on Environmental Impact Assessment and 2013 Act on Integrated Prevention and Environmental Pollution Control. State authorities possess powers to advocate public interests, such as environment, hygiene, protection of historical monuments and public transport. Generally, a real estate project is subject to three principal permits: planning, building and occupancy.

Before any project development, investors should review the available municipal master plan and zone plan. Authorities will not issue required permits if the project does not comply with the relevant master or zone plan. Investors can also propose changes to the plans, however, the change requires the municipality's approval, which it may or may not grant at its discretion.

12 Government appropriation of real estate

Does your jurisdiction have a legal regime for compulsory purchase or condemnation of real estate? Do owners, tenants and lenders receive compensation for a compulsory appropriation?

The competent Construction Office may expropriate real property wholly or partially only when such land is indispensable for the general interest. The Construction Office must provide a corresponding substitute property or payment of a market price compensation determined by an expert appraisal. Before expropriation, the Construction Office must attempt to negotiate a settlement with the owner.

13 Forfeiture

Are there any circumstances when real estate can be forfeited to or seized by the government for illegal activities or for any other legal reason without compensation?

The 2005 Criminal Code provides that a criminal court can seize real property acquired by individual or corporations illegally.

14 Bankruptcy and insolvency

Briefly describe the bankruptcy and insolvency system in your jurisdiction.

There are two insolvency tests in Slovakia. First, a debtor is insolvent (cash-flow insolvency) if it is in delay for more than 30 days in repaying at least two monetary claims of at least two different creditors. Second, a debtor is insolvent (balance sheet insolvency) if it has at least two creditors and the value of its liabilities exceeds the value of its assets.

If the balance sheet insolvency test is met, the debtor's representatives must file for bankruptcy within a prescribed period. A creditor is entitled to file for debtor's bankruptcy if the cash-flow insolvency test is met. The debtor may oppose creditor's petition and prove its solvency.

If the court declares bankruptcy over a debtor, all powers of representation of the debtor are transferred to the bankruptcy trustee appointed by the court. The trustee can, among other matters, terminate any real property lease agreement, including definite term agreements, concluded by the debtor in the position of a landlord or tenant, with two months' notice. Upon declaration of bankruptcy all lawsuits involving the debtor are suspended and cannot continue unless requested by the trustee. Similarly, upon declaration of bankruptcy, any enforcement proceedings involving the debtor's assets, including enforcement of security interests by lenders, are stayed.

An insolvent debtor may develop a restructuring plan and ask the court to permit creditor restructuring. Creditor restructuring involves an agreement with creditors on a pro rata settlement of their claims and restructuring of the debtor's business. If the debtor fulfils the restructuring plan, it may continue as going concern.

Investment vehicles**15 Investment entities**

What legal forms can investment entities take in your jurisdiction? Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

The Slovak Commercial Code recognises the following corporate forms that are also available to foreign investors:

- general partnership;
- limited partnership;
- limited liability company;
- joint-stock company; and
- cooperatives.

The corporate form limits the liability of partners of a limited liability company, stockholders of a joint-stock company, limited partners of a limited partnership and members of cooperatives. Partners in a general partnership and general partners in a limited partnership bear unlimited liability.

The most common forms of investment vehicles are limited liability companies or joint-stock companies.

Slovak law does not recognise real estate investment trusts. However, investors can invest through mutual funds maintained by a fund management company or through a collective investment company.

16 Foreign investors

What form of entities do foreign investors customarily use in your jurisdiction?

Foreign investors typically prefer limited liability companies and joint-stock companies. However, investors from Austria and Germany often choose general or limited partnerships due to the favourable tax regime.

17 Organisational formalities

What are the organisational formalities for creating the above entities? What requirements does your jurisdiction impose on a foreign entity? What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

Companies and partnerships must register in the Commercial Register. Entities established by several founders must submit a memorandum of association, while entities established by a sole founder must submit a founder's deed. Establishment of a joint-stock company requires the memorandum or deed to be in the form of a notarial deed. Mandatory registered capital of a joint-stock company is €25,000; a limited liability company must have a mandatory registered capital of €5,000.

The 2015 corporate income tax is 22 per cent. Income of partners in a general partnership and general partners in a limited partnership is taxed at the level of such partners, not at the partnership level.

There are no special taxes imposed on foreign entities. Individuals planning to reside in and conduct business in Slovakia, except for EU nationals, need a residency permit.

Acquisitions and leases**18 Ownership and occupancy**

Describe the various categories of legal ownership, leasehold or other occupancy interests in real estate customarily used and recognised in your jurisdiction.

Slovak law recognises freehold as permanent unrestricted ownership and leasehold as tenancy for a definite or indefinite period of time, which may involve a right to derive profit from leased property. A creditor may request a charge over real property as security collateral. Note that Slovak law does not recognise the Roman principle 'superficies solo cedit'. Thus, it is possible for a building to have a different owner than the underlying land. Co-ownership of real property, especially of land, is common in Slovakia. A majority of co-owners controls co-owned property.

The individual owner of an apartment in a condominium is automatically a co-owner of all common parts and equipment of the condominium and land under the condominium, corresponding to the ratio of the floor area of the unit to the aggregate floor area of all premises in the condominium. The co-ownership share may be transferred only by simultaneous transfer of the respective apartment.

Slovak legislation recognises two types of easements: easement in rem and in personam. The former benefits all owners of a particular real property to which an easement is created and survives transfer of such real property. The latter is created solely for the benefit of a particular person.

Lease of residential premises is primarily regulated by the Civil Code. As mentioned in question 10, certain landlord rights are restricted. In 2014, the Short-Term Lease of Apartments Act slightly advanced the landlord's position, but only with regard to short- and mid-term residential leases.

Non-residential premises are premises that are designated for retail, office or industrial purposes. Non-residential lease agreements must be concluded in writing. A tenant is entitled to sublease the premises only with prior landlord's approval or specific authorisation in the lease agreement.

19 Pre-contract

Is it customary in your jurisdiction to execute a form of non-binding agreement before the execution of a binding contract of sale? Will the courts in your jurisdiction enforce a non-binding agreement or will the courts confirm that a non-binding agreement is not a binding contract? Is it customary in your jurisdiction to negotiate and agree on a term sheet rather than a letter of intent? Is it customary to take the property off the market while the negotiation of a contract is ongoing?

Slovak law recognises agreements on future transactions, which set the conditions under which the parties will be obligated to complete the transaction in the future. If the obliged party fails to proceed with the transaction, the other party may request a court to replace the demonstration of will of the obliged party. Slovak courts do not enforce non-bidding agreements, such as letters of intent or term sheets. Exceptionally, letters of intent contain binding provisions, for example, on exclusivity, preventing

the seller to market the property to third parties, enforceable by the Slovak courts. However, it is customary to enter into non-binding instruments, such as letters of intent or term sheets, to set out the playing field in the initial stages of transactions.

20 Contract of sale

What are typical provisions in a contract of sale?

The contract of sale must be agreed in writing. The contract must include the following provisions:

- a description of the parties;
- a description of the transferred property – property type, cadastral area, building or plot identification number; and
- the price or the price calculation method.

Representations and warranties are not mandatory, although buyers are advised to include them. The seller usually makes representations and warranties regarding ownership, third-party claims, suitability of the property for agreed purpose and compliance with relevant building regulations. Larger real estate transactions usually include escrow payment mechanisms through notaries or banks.

21 Environmental clean-up

Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

Liabilities for environmental damages are generally tied to the polluter and the polluter's legal successors. In specific cases, when the polluter is unknown, the liability is transferred to the existing owner of the polluted property. If the polluter does not take preventive or clean-up action, the relevant authority may intervene and claim costs.

Investors tend to negotiate representations and warranties that the property is free of environmental burdens or that a facility is fully compliant with environmental legislation. A breach of contract triggers statutory or contractual sanction mechanisms, such as price adjustment, compensation for damage, contractual penalties or termination rights.

22 Lease covenants and representation

What are typical representations made by sellers of property regarding existing leases? What are typical covenants made by sellers of property concerning leases between contract date and closing date? Do they cover brokerage agreements and do they survive after property sale is completed? Are estoppel certificates from tenants customarily required as a condition to the obligation of the buyer to close under a contract of sale?

Sellers of property with existing leases usually provide representations concerning:

- the rent roll;
- the validity and enforceability of existing lease agreements or pre-lease agreements;
- the existence of cash deposits or bank guarantees;
- the existence of any defaults under the lease agreements;
- the existence of any pending or threatened terminations;
- litigation regarding the lease agreements; and
- compliance with tenant improvements.

Brokerage agreements are separate from the lease agreements and are not transferred together with the property unless the parties agree otherwise.

Between signing and closing, sellers usually covenant not to execute new leases or amend or terminate existing leases without the buyer's consent or not to carry out any unforeseen tenant improvements or other major investments without the buyer's consent.

Estoppel certificates from tenants are not common or required as a condition to the obligation of the buyer to close under a contract of sale.

23 Leases and real estate security instruments

Is a lease generally subordinate to a security instrument pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a security instrument upon foreclosure? Do lenders typically require subordination and non-disturbance agreements from tenants? Are ground (or head) leases treated differently from other commercial leases?

A lease is not subordinate to a security instrument. When a debtor fails to repay the debt and the debtor's property, which includes leases, is sold, the new owner becomes the landlord. The new landlord is not entitled to terminate existing lease agreements due to the change of ownership. On the other hand, the tenants are entitled to terminate the lease agreement, nonetheless, they must do so during the earliest statutory or contractual period designed for termination.

24 Delivery of security deposits

What steps are taken to ensure delivery of tenant security deposits to a buyer? How common are security deposits under a lease? Do leases customarily have periodic rent resets or reviews?

Security deposits, either in the form of cash deposits or bank guarantees, are very common in Slovak commercial lease agreements. Usually, cash deposits are held in a bank account of the seller and are transferred to the buyer at closing. Tenant securities provided in the form of bank guarantees may be assigned from the seller to the buyer, however, the assignment usually requires the prior consent of the issuing bank.

Lease agreements typically contain periodic price revision clauses based on the agreed national or EU indices.

25 Due diligence

What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? Discuss the priority among the various interests in the estate.

Title to real property does not transfer to a purchaser if the seller is not the rightful owner. Nevertheless, if the purchaser holds the land in good faith for more than 10 years, the purchaser acquires title by usucaption. Unless the usucaption defence is available, if a document is produced that challenges the title of the seller in the chain of title transfers, all subsequent transfers may be invalidated. The parties are then obliged to return what they received under the invalid contracts – the purchaser must return the property and the seller must return the price paid.

Therefore, it is crucial that investors perform thorough legal due diligence going back at least 10 years. Typically, legal due diligence is performed through checks of the documents deposited in the collection of deeds of the relevant Cadastral Register. Since the collection of deeds is not public, a purchaser needs the seller's involvement and cooperation to access the documents.

Rights to real property are recorded in the Cadastral Register on a 'first in time, first in priority' basis. Notwithstanding this rule, secured creditors may change priority by written agreement registered in the Cadastral Register.

26 Structural and environmental reviews

Is it customary to arrange an engineering or environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available? Is it customary to obtain a zoning report or legal opinion?

Engineering and environmental reviews are advisable, especially in high-value transactions. The reviews should establish any factual technical defects in the structures, non-compliance with the applicable legislation or technical norms, as well as any existing environmental burdens. It is customary to obtain standard representations regarding the technical condition of the transferred buildings as well as representations and indemnities regarding environmental matters. A separate zoning report or legal

opinion is usually not provided. As mentioned in question 7, environmental liability insurance is available.

27 Review of leases

Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

Lease agreements are usually reviewed by lawyers and other business consultants. It is prudent to analyse change of control, rent indexation and lease termination clauses, as well as pending or potential litigation.

Lease agreements survive the change in ownership of real property. However, tenants are entitled to terminate the lease under certain conditions (see question 23). In asset deals, property and facility management agreements do not survive a change of owner. Mortgages are independent from any lease and management agreements and subordination is not necessary.

28 Other agreements

What other agreements does a lawyer customarily review?

Lawyers usually review:

- agreements establishing pre-emption rights and mortgages;
- agreements providing access to real property if the property has no direct access to public infrastructure;
- easement agreements authorising a specific person (easement in personam) or any owner of a particular real property (easement in rem) to use utility connections or pipelines located on adjacent land;
- easement agreements authorising adjacent real property or their owners to passage through the sold property or to other usage of the property;
- utility supply agreements;
- property insurance agreements; and
- confirmations of payment of real property taxes.

29 Closing preparations

How does a lawyer customarily prepare for a closing of an acquisition, leasing or financing?

Lawyers usually prepare a detailed closing checklist to verify whether all closing conditions and deliverables have been met. Typically, lawyers check whether all required corporate or pay-off certificates, extracts from the Commercial Register and deeds of ownership have been presented, whether all existing mortgages and other charges have been properly released and whether all the relevant agreements and project and design documentation have been delivered. Proration of costs and revenues from the property as of the closing date is also customary.

In an asset deal, contracts of sale are typically concluded at closing. Funding normally occurs simultaneously, but funds are often released to the seller only upon registration of the transfer in the Cadastral Register, which occurs up to one month after the closing.

30 Closing formalities

Is the closing of the transfer, leasing or financing done in person with all parties present? Is it necessary for any agency or representative of the government or specially licensed agent to be in attendance to approve or verify and confirm the transaction?

The seller's signatures on the contract of sale must be officially verified and signatures of both parties must be on the same deed. Except for the verification of signatures by a notary, no government official is required to be present at signing or closing. Further, parties may sign the agreements separately.

31 Contract breach

What are the remedies for breach of a contract to sell or finance real estate?

A breach of contract entitles the injured party to terminate the contract, request compensation for damages or payment of contractual penalties. If

a real property transfer contract is terminated after its registration in the Cadastral Register, the parties must enter into a reverse transfer agreement or seek a court decision determining the validity of the termination and the identification of the owner post-termination.

If the sold property has legal or factual defects, the purchaser may request a remedy of the defects or purchase price reduction, provided that the claim management procedure has been complied with.

32 Breach of lease terms

What remedies are available to tenants and landlords for breach of the terms of the lease? Is there a customary procedure to evict a defaulting tenant and can a tenant claim damages from a landlord? Do general contract or special real estate rules apply?

Apart from the generally applicable remedies described in question 31, a landlord has statutory retention and pledge rights over tenants' assets located in the leased premises to secure claims for unpaid rent. However, such rights are rarely exercised in practice due to a complicated legal procedure and low return. Tenants using premises after the termination of lease, irrespective of the method of termination, may be evicted through customary judicial proceedings. Tenants often claim damages from the landlord if the eviction is conducted without a proper judicial order. In certain cases, tenants can also seek preliminary injunctions to prohibit the landlord from evicting.

Financing

33 Secured lending

Discuss the types of real estate security instruments available to lenders in your jurisdiction.

Lenders in Slovakia usually require mortgages on the financed real property. A mortgage is created by a written contract and must be registered in the Cadastral Register. A mortgage is usually created over the land and all buildings developed on the land. Slovak law also permits the creation of mortgages over future property. For example, in residential development projects, a mortgage can be created over future apartments. The developer is obliged to transform the mortgage over the future apartments into a regular mortgage to finished apartments as soon as the building and the individual apartments are completed (this occurs prior to the transfer of title to the buyers).

In addition to mortgages, lenders may also require security over other classes of assets, such as shares in the borrower's project companies, borrower's bank accounts, receivables or stock. All of these security instruments are created through written contracts and registered in the relevant securities registers.

34 Leasehold financing

Is financing available for ground (or head) leases in your jurisdiction? How does the financing differ from financing for land ownership transactions?

Leasehold financing is not available in Slovakia.

35 Form of security

What is the method of creating and perfecting a security interest in real estate?

A mortgage is created on the basis of a written contract and perfected upon registration with the Cadastral Register. A mortgage over real property, created as part of an enterprise pledge, must be registered with the Central Notarial Pledge Register as well as in the Cadastral Register.

A mortgage contract must contain a specification of the secured claim, specification of the collateral, value of the secured claim or maximum principal amount that is being secured. The contract should state for how long the mortgage has been created. If no period is mentioned, the time period is indefinite.

Update and trends

It is expected that during the course of 2016, the Slovak real estate and construction market will undergo complex regulatory overhaul. In the last quarter of 2015, the Slovak parliament will pursue the adoption of a new Construction Act. To the contrary, in July 2015, Slovak government rejected a draft of new Cadastral Act prepared by the central authority administering Cadastral Register and demanded the recast of certain parts. It is likely that both acts will be approved and become effective in 2016.

The new Construction Act should shorten the permission procedure by two to three months if the construction will be carried out in an urban area with a procured development plan. However, the newly introduced development plan will be mandatory only for certain areas with expected construction activities.

The rules on expropriation should be shifted from the Construction Act to the new Expropriation Act. The new Expropriation Act shall become effective simultaneously with the new Construction Act.

The new Cadastral Act contains many minor changes in the procedure of registration of rights; nevertheless, some of them may have significant impact on deal structure or result. In line with the trend of the rise of e-government, authorities administering the Cadastral Register may issue decisions in electronic format. Thus, the new act shortens periods for the authorities to register transfers of rights to real property.

Finally, the corporate framework will also undergo refreshing redesign. The Ministry of Justice proposes a new form of 'simplified' joint-stock company, and the Ministry of Finance proposes an open-ended collective investment company scheme known in Western Europe as SICAV.

36 Valuation

Are third-party real estate appraisals required by lenders for their underwriting of loans? Must appraisers have specific qualifications?

Banks usually require real property valuations to underwrite loans. Valuations are prepared either by in-house valuation departments of the banks or third-party professionals, which may, but need not, be registered with the relevant state authorities.

37 Legal requirements

What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?

Lenders from another jurisdiction can provide loans secured by Slovak real property collateral under the same conditions and ramifications as Slovak lenders. This is, of course, subject to any banking or financial services regulations that may be applicable.

38 Loan interest rates

How are interest rates on commercial and high-value property loans commonly set (with reference to LIBOR, central bank rates, etc)? What rate of interest is unreasonably high in your jurisdiction and what are the consequences if a loan exceeds the reasonable rate?

Interest rates are usually determined with reference to EURIBOR for loans denominated in euros. In some cases, fixed interest rate loans are available. A court may refuse to enforce what it determines to be an excessively high interest rate that is contrary to the fair business conduct principle.

39 Loan default and enforcement

How are remedies against a debtor in default enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding? Are there restrictions on the types of legal actions that may be brought by lenders?

Secured creditors can enforce a mortgage or pledge when the underlying secured claim is not duly and timely paid. No separate judicial decision is required to commence the enforcement. The secured creditor may monetise the collateral in the agreed manner, without further assistance of any state authority. The most common form of enforcement is direct or auction sale. Note that an agreement made prior to the secured claim becoming due and payable, which would allow the pledgor to take ownership of the collateral on default, is void. Such an agreement may only be reached once there has been a default on the secured claim. Foreclosure usually takes two to six months depending on the liquidity of the collateral. On the other

hand, unsecured creditors must bring a claim against a debtor to court before commencing enforcement of the claim.

40 Loan deficiency claims

Are lenders entitled to recover a money judgment against the borrower or guarantor for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure? Are there any limitations on the amount or method of calculation of the deficiency?

Lenders are entitled to recover money judgments against borrowers or guarantors for any deficiency between the outstanding loan balance and the amount recovered in the foreclosure. There are no limitations on the amount or method of calculation of the deficiency.

41 Protection of collateral

What actions can a lender take to protect its collateral until it has possession of the property?

Slovak law recognises possessory and non-possessory pledges. The possessory pledge is usually applicable to moveable assets and provides the lender with higher security and comfort in the case of foreclosure. On the other hand, a possessory pledge is not practical from the perspective of operation of the debtor's business. Therefore, a majority of pledges and mortgages are non-possessory. If a lender initiates enforcement of the non-possessory pledge or mortgage, the debtor must hand over the collateral to the lender upon request. If a loan is secured by a pledge over lease receivables, the debtor must notify the tenants of the commencement of the pledge enforcement and direct them to pay the rent to a designated bank account of the lender. If the debtor fails to notify the tenants, the lender is entitled to notify them directly.

42 Recourse

May security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy or insolvency filing? Is personal recourse to guarantors limited to actions such as bankruptcy filing, sale of the mortgaged or hypothecated property or additional financing encumbering the mortgaged or hypothecated property or ownership interests in the borrower?

A provision allowing recourse to other assets of the borrower where the value of the collateral is lower than the secured claim is generally admissible under Slovak law. However, the enforcement of such recourse provision would differ from the enforcement of the collateral. In a bankruptcy situation, a person bringing a recourse claim would be treated as an unsecured creditor ranking *pari passu* with other unsecured creditors.

43 Cash management and reserves

Is it typical to require cash management system and do lenders typically take reserves? For what purposes are reserves usually required?

Lenders usually require that all cash traffic of the borrower is directed through bank accounts opened with that lender or to special bank accounts controlled by the lender to ensure priority of payments. Similarly, lenders often implement various cash-trap or cash-sweep mechanisms linked to specific financial covenants or other triggers.

44 Credit enhancements

What other types of credit enhancements are common? What about forms of guarantee?

Various types of performance or retention bonds are customary in Slovak real estate development. The rights of the employer under these bonds are often assigned to the financing bank, or a pledge over the receivables under such bonds may be created in favour of the financing bank. The bonds are usually provided as bank guarantees or hold backs.

45 Loan covenants

What covenants are commonly required by the lender in loan documents? What is the difference depending on asset classes?

Commercial real property loan agreements usually contain standard general, information, negative and property covenants. The covenants may differ depending on the asset classes (retail, office, hotel or industrial).

46 Financial covenants

What are typical financial covenants required by lenders?

Financial covenants found in Slovak real property loan agreements are not dissimilar from covenants elsewhere in the Central and East European

region. Such covenants typically include a LTV (loan-to-value), an ICR (interest cover ratio) or a DSCR (debt service cover ratio) covenant. The covenants are periodically reviewed and usually require ongoing appraisals during the term of the loan.

47 Secured moveable (personal) property

What are the requirements for creation and perfection of a security interest in moveable (personal) property? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

The creation and perfection of a security interest in moveable property or intangibles is very similar to the process described in questions 2 and 35. A written agreement must be submitted to the Central Notarial Pledge Register in the case of pledges over moveables and the Industrial Property Office in the case of pledge over intangibles. A pledge over moveable property may be created as possessory pledge and, in such a case, no written agreement and registration is required. The pledgor must deliver the collateral to the pledgee or a designated third party as a condition for the creation of the pledge. Laws on enforcement of judgments restrict enforcement of a security interest in specific moveables such as household items or medical aid possessed by individuals.

48 Single purpose entity (SPE)

Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy or insolvency filing, has the concept been upheld?

Slovak law does not require creation of an SPE for each loan transaction. Lenders usually require that each borrower be an SPE in larger project financing deals. In such case, general corporate law rules apply to each SPE.

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