



INTRODUCTORY GUIDE TO PURCHASING AND SELLING COMMERCIAL PROPERTY IN ROMANIA

This Guide is intended as a basic guide to the legal steps in purchasing and selling commercial property in Romania. Further detail and information can be obtained by contacting Dragomir & Asociații Law firm, Bucharest, Romania, a Romanian Law Europe member firm as detailed on this website.

I. Preliminary aspects of purchasing and selling commercial property:

1. The Buyer will carry on a market research in order to identify the real estates available for selling. The Buyer has two main possibilities for this research: either to conclude a contract for services with a real estate agent, or to designate a representative to identify the real estate. In a contract with a real estate agent, the Buyer usually pays a commission of 3% charged as a percentage of the value of the transaction.

2. Following the real estate identification, the agent or the Buyer's representative will contact the owner of the real estate for the purpose of establishing the conditions for the future transaction and obtaining the necessary information regarding the estate. On Buyer's request, the owner will also convey all necessary documents attesting his ownership.

3. Usually, the Buyer sends to his Lawyer all the necessary information for the future transaction, such as price, payment modalities, warrant, etc. in order for the Buyer's Lawyer to negotiate those conditions with the Seller or his Lawyer.

4. The Seller's Lawyer usually collates all information relating to the real estate and sends it to the Buyer's Lawyer. The Buyer's Lawyer also checks the documents which attest the legal ownership of the seller over the real estate and verifies if there are any encumbrances (mortgage, limits, court cases expressly notified to the Land Registry) whose situation needs to be clarified before the conclusion of the sell- purchase contract.

5. The Buyer's Lawyer will carry on general due diligence investigations. A complete due-diligence investigation will contain not only the title check but also check of the real estate with respect to the existence of court cases related to that particular estate. In addition, an appropriate examination of the Cadastral Certificate is required. A supplementary check with the City Hall is advised to see underground pipes system, electrical wires, gas pipes system, land organization area and also the list of seismic danger estates.



6. If the estate is a building, checking the building permit is also required. In this case it is also necessary to verify whether the conditions stipulated in the building permit were observed, otherwise, the building may be demolished by local authorities.

II. Drafting and signing the contract:

1. Before the conclusions of the Sell-Purchase contract, the parties may sign a sell-purchase promise agreement setting up:

- a time limit for drawing up the sell-purchase agreement;
- the payment of a deposit between 5-10% of the purchase price;

Usually, the sell-purchase promise has the following provisions:

- In case the contract is not concluded at the date set in the sell-purchase promise because of the seller's fault, then he will reimburse to the buyer the double of the amount set as deposit
- In case the contract is not concluded at the date set in the sell-purchase promise because of the buyer's fault, then he loses the amount set as deposit..

2. At the date set in the sell-purchase promise, the parties will sign the sell-purchase agreement which, in order to be valid, must be authenticated by a public notary. The notary will verify the power of attorneys of the persons that represent the parties – as case may be - (including the relevant corporate approvals for the parties legal persons), the ownership title and the fact that there are no impediments to the sale. Updated Land Book certificate (stating that the seller is the owner of the real estate) and excerpts issued by the fiscal authorities (stating that there are no outstanding debts) also need to be presented to the notary for the authentication of the sell-purchase contract.

3. The contract must contain or clearly refer to all main terms and conditions. The contract may also provide clauses such as: environmental permits, license for industrial railways, water resources development license (for industrial property) or the intention to finance the purchase with a loan.

4. According to the Romanian Law, the Seller is held responsible for any hidden vices that Buyer may subsequently find by the real estate and also for any eviction against the Buyer. The Parties can set in the contract the limits of the seller's liability.

5. After the conclusion of the sell-purchase agreement, the notary will register the Buyer as the new owner on the estate in the Land Book, thereby granting to the buyer protection against a subsequent sale.



III. Foreign investments:

1. Before the adherence of Romania to European Union, only a Romanian citizen was allowed to own a title over the land. Foreign investments in real estate in Romania were typically made either by setting up a local company which then would purchase property, or by acquiring a local corporate vehicle owning real estate.

2. After adherence of Romania to European Union in 2007, citizens of a member state, the stateless persons having domicile in a member state or in Romania, the legal entity established in accordance with the legislation of a member state of European Union, may obtain an ownership right over lands in the same conditions as those provided by the law for Romanian citizens/legal entities;

3. The Citizens of a member state non-residents in Romania, the stateless persons non-residents in Romania which have the domicile in a member state and the non-resident legal entities, established in accordance with the legislation of a member state, may attain a right of ownership over lands for secondary residences (secondary headquarters, respectively) upon the expiry of 5 years following the date of Romania's accession to the European Union.

4. Foreign citizens, stateless persons and the legal persons other than those mentioned at point 3 above may acquire a right of ownership over lands, in the conditions regulated under international treaties, on a mutual basis, but not in conditions more favorable than those applicable to the citizens of a state member of the European Union and to the legal persons established in accordance with the legislation of a state member of the European Union.