



Gide Loyrette Nouel

Real Property Investment Law in Romania



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TITLE

Full ownership

General

Ownership of real property is recognised and protected by Romanian law.

Acquisition

Generally, the transfer of ownership of real property occurs upon the execution of the sales deed. However, the parties may postpone the transfer of ownership to a subsequent date.

Formal requirements concerning deeds related to real property

Any deed pursuant to which a transfer of ownership over real property takes place must be executed in notarised form under pain of nullity. Deeds concluded *inter vivos* for the establishment of rights *in rem* over land (e.g. *superficy rights*) must also be executed in notarised form. Deeds concerning construction may however be concluded as private deeds.

Registration formalities

Deeds pursuant to which rights *in rem* are established, transferred or extinguished must be registered with the local bureau of the Office for Cadastral Works and Real Property Publicity in order to become binding against third parties.

Protection of ownership by courts

Romanian courts protect ownership rights in real property.

Rights of the State and of local authorities

"Private domain" and "Public domain"

The State and local authorities have a public property title to assets in their "public domain" and a private property title to assets in their "private domain". The "public domain" consists of assets defined as such by the Constitution and by Act No. 213/1998 on the legal regime of public property, as well as of other assets declared by law as being of public use or interest. The "private domain" consists of all other assets owned by the State or by local authorities.

As regards the differences in the legal regime, according to Act no. 213/1998, property held under the public domain is inalienable, cannot be seized and ownership cannot be acquired by adverse possession. However, it can be administered by a third party, handed over under a concession or leased. Property in the private domain of the State or local public authorities is subject to the general legal regime, unless otherwise provided for by a specific law.

Concessions

According to Act no. 213/1998, concessions can be granted by public auction over real property which is public property. The public auction procedure is governed by Government Emergency Ordinance no. 54/2006 on the legal regime of concessions agreements regarding public property assets. In case a concession is granted over land for construction purposes, the beneficiary acquires ownership of buildings and the right to use the land.

Limitations on acquisition

As of Romania's accession to the European Union, 1st January 2007, citizens of the European Union Member States residing in Romania or legal persons incorporated in accordance with the laws of European Union Member States having established a secondary office in Romania are authorised to acquire land in Romania on the same terms as Romanian nationals.

Individuals who are not Romanian residents and legal persons who have not established a secondary office in Romania will be allowed to acquire land in Romania for residences or secondary offices only after 31st December 2011.

There is a seven year transition period for the acquisition of land used for agricultural and forestry purposes by residents of the European Union. This period will expire on 31st December 2013.

Foreign individuals or legal persons incorporated in accordance with the law of a non European Union state are authorised to acquire land in Romania under the conditions established by the international treaties to which Romania is party and subject to reciprocity.

Foreign individuals, regardless of their citizenship, are authorised to acquire land in Romania by intestate inheritance.

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION

Superficy rights, usufruct and the right of use, easements, mortgages, liens, lease agreements for more than 3 years, pre-emption rights, options, as well as other limitations or interdictions pertaining to disposal or encumbering of real property can be registered with the Real Property Book. Romanian law does not provide for a limited list of such interests that may be registered with the Real Property Book.

Upon authentication of deeds creating, modifying or terminating real property rights, the notary shall obtain an excerpt from the Real Property Book. Therefore, the purchaser of real property acting in good faith cannot claim that it was unaware of any interest which was previously registered and shall be required to respect such interest.

Ownership right and other real property rights obtained by succession, accession (in Romanian "*accessiune*"), forced sale and acquisitive prescription (*usucapio*), as well as real property rights obtained on the basis of a law, by expropriation or pursuant to a decision of a court of law are opposable to third parties without having to be registered with the Real Property Book. However, such rights must be registered in case the holder intends to alienate them.

There are some customary interests in favour of neighbouring properties or other restrictions to the ownership right (such as legal provisions regarding environment protection, urban planning, etc.) which are not rendered opposable to third parties by registration with the Real Property Book. Romanian law does not provide for a limited list of such interests.

THE DEVELOPMENT OF LAND

Rezoning of agricultural land

Prior to the obtaining of the building permit, the land on which the erection of a building is intended must be taken out from the agricultural circuit (if the case). The procedure depends on the location (*intra muros* or *extra muros*) and on the area of the land. For land located *extra muros* a tax of 2 - 4 RON/m² (depending on the quality of the agricultural land) must be paid. This tax is not due if the land is located *intra muros*.

Urbanism plans

Under Romanian law, the buildings that are to be erected must comply with the provisions of the urbanism plans (i.e. General Urbanism Plan, Zonal Urbanism Plan and/or Detailed Urbanism Plan).

Building permit

Any construction of civil, industrial, agricultural or of any other kind can be built only after obtaining a building permit issued according to the procedure set forth by Act no. 50/1991 and the Construction Norms.

A person interested in constructing a building must, first of all, obtain an urban planning certificate. This certificate will inform the petitioner with regards to the legal, economical and technical regime of the land and will provide for the urban planning requirements that must be met with regards to the construction of a building, as well as for the list of all necessary legal notices and approvals for the issuance of the building permit.

In order to obtain a building permit, one must submit a complex documentation to the proper authority (the city hall territorially competent for the location of the real property or the local council), including especially: the title over the plot of land authorising the petitioner to erect the building, the project for authorising the construction works to be performed, the urbanism certificate and the necessary legal notices and approvals, according to the urbanism certificate and the proof of payment of the authorisation tax. The authorisation tax of a building permit is 1% of the estimated value of the construction works, including related utilities. After performing all construction works, when the final hand-over minute has to be issued, the holder of the building permit must request the competent authority to regularise the authorisation tax in accordance with the final value of the investment, by declaring the actual value of the construction works.

The construction permit provides, on the one hand, for its validity period, and on the other hand, the duration within which the construction works must be performed.

The works to be performed on the basis of the building permit must start within maximum 12 months from the date of issuance of the building permit. If the works have been started within the aforementioned 12 month time period, as of the date announced by the investor for the beginning of the works, the building permit is valid for the duration of the execution of the works (as mentioned in the building permit). The permit expires and a new building permit must be obtained, in case the works have not been started within the 12 month period or are not fully finalised within the time period mentioned in the building permit.

As an exception to this rule, should the holder of the building permit justify the non-compliance with the above-mentioned time schedules, it is entitled to request the issuing authority, at least 15 days prior to expiration of the permit's term, the extension of such term. The extension of the permit's term can be granted only one time and for a period not exceeding 12 months.

Upon completion of the construction works, the ownership right over the building must be registered with the Real Publicity Book in order to render it opposable to third parties. In order to obtain such registration, the applicant must submit the building permit, the reception minutes upon completion of work, the cadastral documentation for the building as well as a certificate issued by the city hall attesting that the building has been erected in compliance with the provisions of the building permit.

FINANCIAL LEASES

Financial leases are governed by Ordinance no. 51/1997 and may be used for commercial real property, acquired or built by a real property leasing company. In order to be binding on third parties, real property financial leases must be registered with the Real Property Book Office in the vicinity of the real property. If there are changes related to the seat of the tenant or of the leasing company or to the legal status of the real property, the parties must rectify the registration in the Real Property Book.

COMMERCIAL LEASES

No specific statute

There are no specific regulations governing commercial leases in Romania. The general provisions of the Romanian Civil Code apply.

Form

Lease agreements may be executed as a private deed. There are no special formal requirements that affect the validity of the deed.

Duration

A lease agreement may be executed for a definite or indefinite period of time. An indefinite lease is a lease concluded for an undetermined period of time. It is distinct from a perpetual lease. A perpetual lease is generally considered to be a hereditary lease, which is a lease granted in favour of a person and its descendants (in Romanian "*emfiteuză*"). Perpetual leases are forbidden by law.

Termination

Leases concluded for an indefinite period of time may be terminated by either party at any time, subject to prior notification. If the parties have not determined the notification period, it shall be determined according to local customs.

The early termination of leases concluded for a definite period of time is allowed only when provided in the lease agreement.

No right of renewal

The tenant has no statutory right of renewal pursuant to the Romanian Civil Code.

However, if after the expiry of the term of the lease, the tenant continues to use the leased premises with the consent of the landlord, a new lease agreement is deemed to have been concluded, pursuant to the same terms as the former one, but for an indefinite period of time.

No pre-emption right of tenant

Romanian law does not grant tenants pre-emption rights over commercial premises.

Rent and rent cap

Romanian law does not provide for any rent caps for commercial leases. The parties are free to agree the rent of the leased premises.

Rent review

Rent may be adjusted only in accordance with contractual provisions. Romanian law does not provide for any rent indexation provisions for commercial leases.

Costs rechargeable to tenants

There are no legal provisions prohibiting recharging all expenses relating to a real property to a tenant.

Repair expenses

Lease related expenses (i.e. the usual repair and maintenance works) are, as a general rule, borne by the tenant. Capital repairs and those due to the normal use of the leased space are usually borne by the landlord.

Improvements

If the tenant has carried out improvements, the landlord is entitled, at the end of the lease, to require the tenant to restore the premises to their original condition, at the tenant's expense. If not required to restore the premises to their original condition, the tenant is entitled to compensation for the improvements.

Transfer of the real property by landlord

In order to be enforceable against third parties (i.e. the new owner of the real property), lease agreements with a term exceeding three years must be registered in the Real Property Book.

If a lease agreement exceeding three years is not registered in the Real Property Book but was executed as a notarised deed or has acquired a certain date (i.e. by way of registration of the lease agreement with the Trade Registry), it shall be enforceable against the new owner of a property as follows:

- if, as of the date of transfer of ownership, the term remaining under the lease exceeds three years, the lease agreement shall be enforceable for a three year term starting with the date of transfer of ownership;
- if, as of the date of transfer of ownership, the term remaining under the lease does not exceed three years, it shall be enforceable against the new owner until the expiry of the lease.

If a lease agreement with a term exceeding three years is not registered in the Real Property Book, is not authenticated and has not acquired a certain date, it shall not be enforceable against a new owner.

Transfer of lease agreement by tenant

Transfers are subject to the same conditions as subleases.

However, in case of assignment of the lease, only the rights of the tenant under the lease agreement shall be transferred to the transferee without the tenant's obligations there under.

Sublease

The tenant may sublease the commercial space subject to subleases not being prohibited in the lease agreement and as long as it does not infringe upon the provisions of the main lease agreement.

TAX

Transaction costs

Sale of land and buildings

VAT

Transfer of title to real property is in principle VAT exempted. By derogation, the exemption does not apply for the supply of a new building, of a part thereof or of a building land by a taxable person who deducted or had the right to deduct the VAT upon the acquisition, transformation or construction of such real property. Such last operations are taxable at the standard rate of 19%.

As regards the real property exempted operations, taxable persons have nevertheless the right to opt for VAT taxation.

The Fiscal Code has set a simplified procedure for the payment of VAT of real property operations (whether they are taxable *de jure* or pursuant to the option granted to taxpayers), when both the seller and the buyer are registered as VAT taxpayers in Romania. Thus, VAT will no longer be effectively paid but simply mentioned on the invoice ("*reverse charge*" / "*taxare inversa*") and registered in the books of account as deductible VAT and collected VAT.

The sale of shares is not subject to VAT.

Transfer Tax

Revenues obtained by natural persons following the transfer of ownership or other real property rights (in Romanian “*dezmembraminte ale dreptului de proprietate*”) over real property, pursuant to deeds concluded *inter vivos*, shall be subject to a revenue tax at a rate varying according to the period of time during which the taxpayer held the ownership of the real property and according to the value of the real property, as follows:

Value of the real estate	Held for a term of 3 years maximum	Held for a term of more than 3 years
RON 200,000 maximum (c. EUR 59,000)	3%	2%
More than RON 200,000	RON 6,000 (c. EUR 1,765) + 2% of the amount exceeding RON 200,000	RON 4,000 (c. EUR 1,176) + 1% of the amount exceeding RON 200,000

Corporate income tax aspects – Romanian sellers

Direct disposal / lease

Revenue earned by companies, including revenue from the conveyance of title to real property and that earned under lease agreements, is subject to corporate income tax at the rate of 16%.

Indirect disposal

The price of the transfer of shares also constitutes taxable income for the company selling its shares and is subject to corporate income tax at the current rate of 16%.

Corporate income tax aspects - foreign seller

Direct disposal / lease

Revenue earned by companies from the sale of constructions located in Romania, as well as from the lease of real property located in Romania, is subject to corporate income tax at the rate of 16% (standard rate for corporate income tax), except if more favourable provisions of a tax treaty are applicable.

Indirect disposal

Capital gains earned by companies from the sale of shares in a Romanian companies, the assets of which are mainly composed of real property located in Romania (at least 50% of immovable assets are located in Romania), are subject to corporate income tax at the rate of 16%, except if more favourable provisions of a tax treaty are applicable.

Tax treaties

According to most of the tax treaties signed by Romania, capital gains from real property (gains pursuant to the sale of real property or shares in a real property company) are subject to taxation in the country where the real property is located.

LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS

Real property transactions usually involve the following costs.

Notary fees

The authentication of deeds relating to the transfer or creation of real rights is subject to notary fees. Notaries may freely fix their fees. However, such fees must follow the minimum thresholds set out below:

Value (RON)	Minimum Notary fees (RON)
Less than 13,696	2.5% but no less than 150
13,696 – 27,499	342 + 2% of the amount exceeding 13,696
27,499 – 54,891	618 + 1.5% of the amount exceeding 27,499
54,891 – 274,562	1,029 + 1% of the amount exceeding 54,891
274,562 – 549,231	3,226 + 0.75% of the amount exceeding 274,562
Over 549,231	5,286 + 0.5% of the amount exceeding 549,231

EUR 1 = approximately RON 3.4

Lawyers

There are no statutory restrictions on the fees and expenses of lawyers.

Real Property Book

Real property acquisitions must be registered with the competent Real Property Book, maintained by the local Real Property Book Bureau, in order to bind third parties.¹

In case the seller is a company, the registration of real property's acquisition in the Real Property Book is subject to taxation at a rate of 0.3% of the real property's value in case the buyer is a natural person or a rate of 0.5% of the real property's value in case the buyer is a legal person.

Publication

There is no statutory requirement of publication.

¹ Act No. 7/1996.

SECURITY USED IN REAL PROPERTY FINANCINGS

Under Romanian law, the main types of security interests over real property are mortgages and real property privileges. However, aside from the security interests over real property, the security package commonly used in real property investment financings may also comprise the following:

- bank account pledge;
- share pledge;
- assignment of lease receivables;
- assignment of insurance proceeds;
- assignment of construction guarantees (*i.e.* bank guarantees, retention monies);
- negative pledge.

Mortgages

General

Pursuant to the Romanian Civil Code, mortgages can be created by law or by contract. Mortgages have the following characteristics:

- mortgages are an ancillary right *in rem* giving their holder the right to execute the collateral in the hands of the debtor and any subsequent owner or possessor of the collateral and the right to take priority over ordinary creditors and lower ranking secured creditors;
- mortgages are governed by the so-called principle of “double specialisation”, meaning that both the collateral and the amount of the secured obligation must expressly be determined, under pain of nullity;
- mortgages continue to affect the whole property (a partial payment does not release a corresponding part of the mortgage).

In addition to conventional mortgages, Romanian law provides for legal mortgages constituted pursuant to special legal provisions such as mortgages guaranteeing the enforcement of payment obligations to the State budget, or mortgages securing the payment of damages in criminal proceedings.

Formal requirements

Mortgage agreements must be executed as a notarised deed. Any other type of written instrument is null and void.

Notary fees

Notary fees must be paid in relation to the authentication of mortgage agreements. The minimum amount thereof is linked to the amount of the secured obligation concerned, as set out below:

Value (RON)	Minimum Notary fees (RON)
Less than 50,000	1% but no less than 100
50,000 – 100,000	500 + 0.75% of the amount exceeding 50,000
100,000 – 200,000	875 + 0.5% of the amount exceeding 100,000
200,000 – 500,000	1,375 + 0.2% of the amount exceeding 200,000
Over 500,000	1,975 + 0.1% of the amount exceeding 500,000

EUR 1 = approximately RON 3.4

Perfection and priority

Perfection of mortgages is achieved through registration in the Real Property Book. Mortgages for which registration has been requested on the same date have equal rankings. Registration of a mortgage in the Real Property Book is subject to a tax of RON 100 (c. EUR 30) plus 0.1% of the amount of the secured obligation.

Enforcement of a mortgage contract is carried out pursuant to the general legal procedure under which the creditor must go before the competent courts and obtain an enforceable order. However, the Banking Act no. 58/1998, as amended, provides for an exception in case of bank credit agreements, as well as any pledges related thereto, which are enforceable *per se*.

Real property privileges

General considerations on privileges

Romanian law establishes certain cases in which a creditor, due to the nature of its claim, is preferred to other creditors, including secured creditors. Such special rights of creditors are called liens ("*privilege*").

Liens operate by law and give certain categories of creditors priority. According to the Romanian Civil Code, liens are classified as (i) *general*, to cover either all the movable and immovable property of the debtor or only his personal chattels, or (ii) *special*, to cover either certain personal property or certain real property of the debtor.

In principle, special liens take priority over general ones, with the exception of the lien related to legal expenses incurred during court procedures.

Special liens on real property

The most important types of liens on real property, from a commercial point of view, are the lien of the unpaid seller of real property or the financier thereof and the lien of the architect, contractor and construction workers.

The lien of the unpaid seller of real property or the financier thereof

This lien secures the payment of the purchase price or any balance thereof. In case of multiple sales of the same immovable, the first unpaid seller takes priority over the second, who in his turn is preferred to the third one and so on.

The financier of an acquisition of real property enjoys the same privilege, provided that the purpose of the financing and the right of the financier to be subrogated in the rights of the seller are expressly mentioned in the notarized credit agreement. Furthermore, the seller's receipt must confirm that the price was paid out of the financed amount.

The lien of the architect, contractor and construction workers

This lien ensures recovery of design, construction or repair costs. This lien may also benefit the person who financed the payment of construction workers.

Conflicting privileges in real property and mortgages

Under Romanian law, the holder of a real property privilege governed by the Romanian Civil Code ranks ahead of other creditors, including other mortgagors.

Other security interests

General considerations on other security interests

Under Romanian law, security interests in movable assets are regulated by the Secured Transactions Act 1999.² The assignment of receivables is also governed by the Secured Transactions Act 1999 in respect of the publication formalities and the enforcement procedure.

According to the Secured Transactions Act 1999, a security agreement is validly concluded if the parties expressly agree all terms and conditions thereof by private deed. The security agreement must provide for the maximum amount of the secured obligation.

The collateral subject to the security interest may be defined as individual assets, classes of assets or even in broad terms, such as: "*all present and future movable assets of the obligor*".

The security agreement must be registered with the Electronic Archive for Secured Transactions for publicity and priority purposes. Registration with the Electronic Archive renders the security interest binding against third parties, grants it a priority rank and allows it to be enforced according to the expeditious procedure provided for under the Secured Transactions Act 1999.

The costs related to the registration of a security agreement with the Electronic Archive for Secured Transactions are not significant.

A creditor who files its security interest is irrefutably presumed to be aware of the existence of prior security interest registrations.

Bank account pledge

Bank accounts subject to security interests must be identified in the security agreement. Therefore, a general pledge on all present and future bank accounts of an obligor is not valid.

Lenders therefore generally require to be notified of any new bank accounts of the obligor and such notification is automatically incorporated into the security agreement, followed by specific registrations of the pledge on such new bank account with the Electronic Archive for Secured Transactions.

In case of enforcement proceedings over bank accounts, the account bank must follow the priority order set forth in the Electronic Archive for Secured Transactions. A first ranking creditor shall be paid first, even though its claim is not outstanding, up to the amount of its claim, if the enforcement proceedings were initiated by a second ranking creditor.

Pledge over shares

Pledges over shares must be registered in the shareholders' registry kept by the company's managing director(s). A proof of registration is issued to the lender.

Under Romanian law, the transfer of shares in a limited liability company to a third party is subject to the approval of shareholders representing at least three quarters of the share capital. Consequently, in order to ensure the effectiveness of a pledge on shares in a limited liability company, it is advisable for the lender to obtain, upon the execution of the security agreement, such consent for the transfer of title to shares upon enforcement of the pledge.

There are no legal restrictions with regard to the transfer of shares in Romanian joint stock companies.

² Title VI of Law no. 99/1999 on Secured Transactions.

Assignment of receivables

The assignment of receivables under lease contracts or insurance policies is possible either as a standard legal assignment or as an assignment conditional upon default under the loan agreement.

The obligor may be requested to guarantee the assigned debtor's solvency (present or future), if stipulated in the assignment contract.

The assignment must be registered with the Electronic Archive for Secured Transactions for publicity and priority purposes and notified to the assigned debtor through a court bailiff or accepted by the assigned debtor either by means of a private deed or as an authentic deed.



About the Law Firm

Gide Loyrette Nouel is an international law firm that has been advising real estate investors since 1920. Gide Loyrette Nouel has been present in Central and Eastern Europe since 1991.

About the Authors

Bruno Leroy is the partner in charge of the Bucharest office of Gide Loyrette Nouel. He was admitted to the Paris Bar in 1995. He holds an ESCP (Master's degree) in international business law from Paris, a DESS (Master's degree) in business law, Faculty of Law of Paris V (1991) and a *Maîtrise* in private law, University of Paris (1990).

Mihaela Purice is an associate in the Bucharest office of Gide Loyrette Nouel and a member of the International Real Estate Practice Group. She was admitted to the Bucharest Bar in 2004. She has a master degree in competition law, Academy of Economic Sciences in association with the Bucharest Legal Counsels Association (2006), European law degree, French-Romanian Law School in association with University of Paris Panthéon-Sorbonne (2004) and a law degree, University of Bucharest Law School (2004).

Gide Loyrette Nouel

10-12 Strada Maior Sontu

Sector 1 - Bucharest

Romania

Tel. +40 21 223 03 10

Fax +40 21 223 03 42

E-mail: gln.bucharest@gide.com

Contact

Bruno Leroy

E-mail: bruno.leroy@gide.com

Mihaela Purice

E-mail: purice@gide.com



Gide Loyrette Nouel